



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY
साप्ताहिक
WEEKLY

सं. 15] नई दिल्ली, अप्रैल 9—अप्रैल 15, 2017, शनिवार/चैत्र 19—चैत्र 25, 1939
No. 15] NEW DELHI, APRIL 9—APRIL 15, 2017, SATURDAY/CHAITRA 19—CHAITRA 25, 1939

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विज्ञान और प्रौद्योगिकी मंत्रालय

(विज्ञान और प्रौद्योगिकी विभाग)

नई दिल्ली, 3 अप्रैल, 2017

का.आ. 885.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में, विज्ञान और प्रौद्योगिकी विभाग, भारत सरकार के अंतर्गत एक सांविधिक निकाय “विज्ञान और इंजीनियरी अनुसंधान बोर्ड”, नई दिल्ली को जिनके 80% से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[फा. सं. ई-11028/1/2013-रा.भा.]

बी. एस. रावत, संयुक्त सचिव

MINISTRY OF SCIENCE AND TECHNOLOGY
(Department of Science and Technology)

New Delhi, the 3rd April, 2017

S.O. 885.—In pursuance of Sub-rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the “Science Engineering Research Board”, New Delhi The Statutory Board under Department of Science and Technology, Govt. of India the 80% and more per cent staff whereof have acquired the working knowledge of Hindi.

[F. No. E-11028/1/2013-OL]

B. S. RAWAT, Jt. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 886.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार विभाग, भोपाल, मध्य प्रदेश एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 145/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/202/2000-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 5th April, 2017

S.O. 886.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 145/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, Department of Telecommunication, Bhopal, Madhya Pradesh and their workman, which was received by the Central Government on 08.03.2017.

[No. L-40012/202/2000-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/145/2000**

Shri Premnarayan Sen
S/o Shri Shambulal Sen
Vill & PO Barkheda,
Tehsil Biaora,
Rajgarh

...Workman

Versus

Chief General Manager,
Department of Telecommunication,
Hoshangabad Road, MP Circle,
Bhopal (MP)

TDE, Rajgarh, At: Biaora,
Rajgarh

...Management

AWARDPassed on this 14th day of February, 2017

1. As per letter dated 7-8-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-40012/202/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Telecom/TDE in terminating the services of Shri Premnarayan Sen S/o Shambulal Sen w.e.f. 1995 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 6/1 to 6/4. Case of workman is that he was working as casual labour in Karanvas exchange from 1987 to 1995. His services were terminated without notice in 1995. Ist party workman further submits that Mohd. Ahmad was working with 2nd party since 1987 to March 1988 and onwards from 88 to February 1989. Shri Jagram Singh Jadhav was working

during 1989 to 1990. Nasir Khan was working at Karanvas Exchange from January 1990 to 1995. 2nd party No. 3 is competent authority. 2nd party No.2 is Controlling Authority. The decisions for management are taken by 2nd party No.1. that the Union had filed proceeding for regularization of the casual workers was decided by Hon'ble Supreme Court recorded in AIR-1988-SC-2342. Hon'ble Supreme Court had given directions to frame scheme for regularization of casual labours. The scheme for regularization of casual labours was introduced by Government on 7-11-89. As per the scheme, casual employees engaged prior to 30-3-85 were eligible for regularization. The cut off date was held illegal by CAT, Delhi in Original application No. 1476/90. Ist party workman claims to be eligible for regularization in service. That oral termination of his service is illegal. No chargesheet was issued to workman. Enquiry was not held against him. Workman completed more than 240 days continuous service. His services are terminated in violation of Section 25-F of ID Act. Workman was paid Rs.1200 per month less than minimum wages by the management exploiting workman. Management intentionally not obtained his signatures about his attendance. It is reiterated that oral termination of his services is illegal. On such ground workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of Ist party workman at Page 6/5. 2nd party contented that there was no question of illegally terminating services of workman, appointment letter was not issued to workman. Workman was engaged for repairing work. Workman himself remained absent. In 1987, workman worked for 24 days, in 1988 for 128 days, in 1989 for 149 days. Workman did not worked for a single day in 1990. In 1991, workman worked for 30 days. It is denied that workman had worked continuously more than 240 days. Workman was paid wages for his working days. Workman is not eligible for regularisation

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager, Telecom/TDE in terminating the services of Shri Premnarayan Sen S/o Shambulal Sen w.e.f. 1995 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

5. The term of reference pertains to legality of the termination of services of Ist party workman. Workman filed affidavit of his evidence on 20-10-15. In his affidavit of evidence, workman has stated that he was working with 2nd party from December 1987 till termination of his services in the year 1995. He worked with devotion. His initial appointment was as casual labour by Sub Divisional Engineer, Rajgarh. He completed more than 240 days continuous working during each of the years. He was paid Rs.1200 per month. His services were orally terminated without notice, he was not paid one months pay in lieu of notice. In his cross examination, workman says post on which he was working was not advertised. He was orally interviewed. Written exam was not held. Appointment letter was not issued to him. He was paid wages for his working days. He was allowed 4 days leave in a month. He worked 24 days in 1987, he was engaged in the month of December. He denied to have worked for 128 days in 1988, 49 days in 1989 and did not work in a day in 1990 and worked for 30 days in 1991. Workman denied that he was engaged as per exigencies. Workman denied he not completed 240 days continuous service during any of the year.

6. Management filed affidavit of evidence of Shri Ramgopal. The witness in his affidavit says workman was engaged as casual labour for specific period. The working days pleaded in Written Statement are also narrated in para 4 of his affidavit. Management's witness in his cross says he is posted at Rajgarh office from 30-12-2010, he was not posted in said office during 1987 to 1995. That affidavit of his evidence is filed as per available record. He had seen attendance and payment registers pertaining to work. On its basis, he has stated about his working days. Witness of management was unable to tell why documents as per order dated 14-8-13 are not produced. He had not seen any documents or retrenchment notice or payment of compensation to the workman. He claims ignorance about preparing seniority list of daily wage labours. Workman was not engaged for specific work. Workman was engaged as unskilled labour as per requirement digging ditches. Work of line fault was done in the department in the past. Suggestion is denied that workman worked more than 240 days during each of the year 1987 to 1995.

7. Application for production of documents was submitted by workman on 29-5-06. The perusal of record shows that on 9-9-09, management was directed to produce documents. Management did not file documents as per order dated 11-6-14. Workman as allowed to lead secondary evidence. Workman has not adduced secondary evidence.

8. Learned counsel for Ist party Shri Arun Patel relies on ratio held in case between-

Director, Fisheries Terminal Department versus Bhikubhai Meghajibhai Chavda reported in 2010(2)MPLJ-30. Their Lordship dealing with workman hired on daily wage basis deposed that he worked for 240 days during 1985 to 1991. Burden of proof shifts to the employer to prove that he did not complete 240 days of service in the requisite period to constitute continuous service.

In present case, engagement of workman as casual labour is admitted in Written Statement and evidence of management. Management has failed to produce documents despite the orders passed by the Court. Evidence of management's witness that workman did not work for more than 240 days cannot be accepted as the documents in question are not produced. Management's witness in his cross says he had seen attendance and payment register. The documents are not produced therefore evidence of workman deserves to be accepted. Management's witness in his cross says he had not seen documents about notice issued to workman or payment of one months pay in lieu of notice therefore termination of services of workman is illegal for violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

9. Point No.2- In view of my finding in Point No.1 termination of services of workman is illegal, question remains for decision is whether Ist party workman is entitled for reinstatement with backwages. As per evidence of workman, he was working with 2nd party from December 87 till 1995- date is not specified from pleadings or evidence.

10. Shri Arun Patel relies on ratio held in case between

Tapash Kumar Paul versus BSNL reported in 2014(4)S.C.R.875. Their Lordship held that Divisional bench of High Court gravely erred in ignoring the normal rule that ordinarily a workman whose service has been illegally terminated would be entitled to full backwages except to the extent he was gainfully employed during the enforced idleness.

In case between Deepali Gundu surwase versus Kranti Junior Adhyapak Mahavidyalaya and others reported in 2013(10)SCC-324. The Tribunal's order was restored for full backwages. Their Lordship dealing with reinstatement and backwages considering conduct of employer and suffering of employees held denial of backwages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay backwages.

In case between Engineer in Chief, Water Resources Department, Bhopal versus Manharan reported in 2016(4) MPLJ-63. Their Lordship dealing with Section 25-F, B retrenchment of workman. Workman was in continuous service for 258 days. The reinstatement without backwages challenged by the department was dismissed.

11. Shri Arun Patel also relies on ratio held in case between-

Gauri Shanker versus State of Rajasthan reported in 2016(1)SCC-L&S-546. Their Lordship held that modification of award by awarding compensation in lieu of reinstatement by High Court is contrary to the well settled principles of law laid down in a catena of cases by Supreme Court.

Reliance is also placed in case between Ajaib Singh versus Sirhind Cooperative Marketing cum Processing Service Society Limited and another reported in 1999(6)SCC-82. Ratio held in the case pertains to that proceeding under Section 10 & 33(C) of ID Act are not subject to limitation under Article 137 of Limitation Act. Their Lordship held even in cases of proved delay, relief can be moulded by declining whole or part of backwages.

In Tapash Kumar case of 2014, reported at Page 885, their Lordship observed the Court may deny relief of reinstatement where reinstatement is impermissible because the industry is closed down, the court may deny relief of backwages as that would place impossible burden on the employer.

In present case, dispute is raised in the year 2002. Workman was not diligent in prosecuting the reference. He remained absent on several dates. Statement of claim was filed on 1-2-05, affidavit of evidence was filed on 20-10-2015. Considering above aspects, relief needs to be suitably modified. Considering ratio discussed above, workman deserves to be allowed reinstatement with 25 % back wages from date of reference. Accordingly I record my finding in Point No.2.

12. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager, Telecom/TDE in terminating the services of Shri Premnarayan Sen S/o Shambulal Sen w.e.f. 1995 is not legal and proper.
- (2) 2nd party is directed to reinstate workman with 25 % back wages from date of order of reference i.e. 7-8-2000.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 887.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, टेलोकॉम फैक्ट्री, जबलपुर व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 182/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2017 को प्राप्त हुआ था।

[सं. एल-40011/25/2001-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 5th April, 2017

S.O. 887.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 182/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, Telecom Factory, Jabalpur and their workman, which was received by the Central Government on 08.03.2017.

[No. L-40011/25/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/182/2001**

Shri A.J. Sunny, Secretary,
All India Telecom Engineering Employees Union,
Class III, Telecom Factory,
Mary Manzil 12, Sanjeevni Nagar,
Jabalpur

...Workman/Union

Versus

Chief General Manager,
Telecom Factory,
Jabalpur

...Management

AWARDPassed on this 30th day of January, 2017

1. As per letter dated 27-11-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40011/25/2001-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Telecom Factory, Jabalpur in awarding punishment of reduction to the minimum of the pay scale for a period of 3 years with cumulative effect and not to grant annual increments for participating in Union activities in the factory on 5-0-88 to Shri A.J.Sunny, Section Supervisor and Shri M.K.Patel, Office Assistant is just, fair and legal? If not, to what relief are the workmen concerned entitled?”

2. After receiving reference, notices were issued to the parties. Ist party filed statement of claim through Union. Case of Ist party is on 30-9-88, Trade Union agitation took place in the factory on the issue of wearing of protective appliance in which 6 trade Union leaders, 4 belonging to All India P&T Industrial Workers Union and 2 from applicant union namely Shri A.J.Sunny and Mukesh Kumar Patel were placed under suspension that for revocation of suspension of 6 trade Union leaders, another round of trade union agitation took place on 5-10-88 inside the factory. That above named persons did not participate in the agitation but due to revengeful and prejudiced attitude of the management and with ulterior motive to victimize Shri A.J.Sunny and Mukesh Patel of applicant union besides 4 persons of P&T Industrial Workers union chargesheets under Rule 14 of CCS CCA Rules, 1965 were issued against the above named workmen alleging that they were indulged in demonstration and gherao of officers inside the factory on 5-10-88. That departmental enquiry was ordered. Shri J.P. Khare was appointed as Enquiry Officer. After completion of enquiry, report was submitted holding that charges against Shri A.J. Sunny and Patel were established. On basis of Enquiry report, punishment of dismissal from service was awarded on them. On appeal, punishment of dismissal was reduced to punishment of reduction of minimum pay scale for period of 3 years with the effect to postpone future increments. The official preferred revision against order of punishment dated 2-9-97 effective from 27-5-97. And penalty of reduction to minimum of pay scale for a period of 3 years with cumulative effect has been allowed to continue. According to Ist

party, said action of management is unfair, illegal and liable to be set aside. Ist party further submits that extreme punishment was awarded to the office bearer of the Union with ulterior motive to victimize them for trade Union activities prohibited under ID Act. That said punishment was awarded without proper enquiry. Enquiry Officer was junior to the principal complainant of the case i.e. Dy.General Manager. The complainant was under influence of higher authorities, fair decision was not taken. Disciplinary Authority being junior to the complainants did not take independent decision and simply acted as per the directions of his superiors to victimize the above named officials. Punishment was awarded in breach of settlement in meeting between Member, Telecom Commission, New Delhi and the representatives of P&T Industrial workers Union arrived at in a meeting held on 5-11-90, the applicant Union submits that as per said settlement, the cases should have been condoned and closed as has been done in other cases of workmen. Similarly involved workmen like A.K.Ray against whom similar charges alleged were awarded lesser punishment of reduction of six months. Ist party prays that full pay and allowances for the period of dismissal in case of Mukesh Kumar Patel punishment of reduction of minimum pay scale for 3 year be quashed and period of dismissal be treated as duty period for all purpose.

3. 2nd party filed Written Statement opposing claim of workman at Pages 5/ to 5/8. 2nd party reiterates that both workman are civil servants, their services are covered under CCS CCA Rules. Enquiry was held against them as per rules. This Tribunal has no jurisdiction against respective workmen. Workman are not entitled to any relief. That Shri S.J.Sunny Ex-employee of Telecom factory Jabalpur, Mr. Mukesh Patel presently employed in Telecom Factory Jabalpur were working as Section Supervisor and office assistant respectively. That Shri Sunny and Patel while functioning as Supervisor, Office Assistant exhibited lack of devotion to duty by leaving the place of their duty without permission and instigated others to struck the work by calling and collecting a mob of workers, committed tress pass into the chamber of general Manager, Telecom Factory Jabalpur without prior intimation and permission., they along with others gheraoed General Manager and Dy.General Manager shouted filthy slogans and defaming General Manager and DGM. The applicants participated in the act of demonstration and wrongful confinement of General Manager and DGM. 2nd party reiterates that concerned worker given provocative speech to the mob and the mob was highly charged and the mob tore sofa in General Manager's chamber, broke call bell of General Manager's table and put off frequently lights and fans of General Manager's chamber. That Ist party committed willful insubordination and disobedience of the lawful and reasonable order of appropriate authority by unauthorizedly entering into the factory. Shri A.B.Samanta, Asstt. Manager, Telecom Factory was appointed as Enquiry Officer, S.S.Jangi Assistant Engineer was appointed as Presenting officer. Workman had requested for change of Enquiry Officer. The representation were forwarded to department of Telecom, New Delhi. Request for change of Enquiry Officer was approved. Shri J.P.Khare was appointed as Enquiry Officer. It is reiterated that enquiry was committed by independent officer. Enquiry Officer held charges against Sunny and Patel proved. Considering the proved charges, punishment of dismissal was imposed vide order dated 9-10-91 against Sunny and Patel. In appeal preferred by both workers, the punishment was reduced to minimum of time scale for 3 years with cumulative effect. The appeal by Patel was rejected by Appellate Authority vide order dated 5-6-92. Both Sunny and Patel preferred revision which was rejected on 2-9-97 after giving full opportunity of hearing. 2nd party denied adverse contentions of Ist party. 2nd party contented that both workers had participated in agitation dated 5-10-88. The contentions of Ist party they did not participate in agitation is incorrect. The mercy petition was filed by Sunny on 25-10-2000. 2nd party submits that looking to the grave misconduct by workman and long service in department, good service record, Appellate Authority modified punishment of dismissal to reduction of pay to minimum of time scale for 3 years. It is reiterated that both the workmen committed grave misconduct by forcibly and physically overpowering security persons, the act of gherao giving provocative slogans, threatening language, physical obstruction etc. the charges are proved. The claim of Ist party workman deserves to be rejected.

4. As per order dated 14-5-15, enquiry conducted against workman was found legal though the record of enquiry proceeding was not produced.

5. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Negative
(ii) Whether the punishment of reduction of pay to lowest scale for 3 years with cumulative effect imposed on workman is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. Point No.1- As per order dated 14-5-15, enquiry conducted against workman was found proper and legal. While dealing with legality of enquiry conducted against workman, it is noticed that enquiry conducted by Officer junior in rank itself cannot be a ground for vitiating the enquiry. Though record of Enquiry Proceeding was not produced, issue was answered in Affirmative.
7. Though enquiry against workman is found legal, question whether charges / misconduct alleged against workman are proved requires to be decided from evidence in Enquiry Proceedings.
8. Management has produced documents Exhibit M-,2 memorandum of charges. Exhibit M-3 Enquiry Report- Enquiry Officer has discussed evidence and evidence in their cross-examination Exhibit M-4 is copy of Enquiry report. Exhibit M-5,6 is articles of charges. Exhibit M-7,8 is orders dated 27-3-92 passed by Appellate Authority. As per exhibit M-9 order dated 2-9-97, M-10 order dated 7-1-93 revision were rejected. Despite long litigation between parties and proceeding of enquiry conducted against both workmen is not produced. As such evidence in Enquiry Proceedings is not produced by the management for unexplained reasons.
9. Learned counsel for Ist party Shri S.K.Mishra emphasized as per the settlement between management and Union Exhibit M-12, cases should have been closed. Perusal of Exhibit M-12 shows it is not signed by any of the office bearer of the Union or management representative shown in M-2. The document M-12 appears incomplete and cannot be accepted as genuine document., however as management has failed to produce record of Enquiry Proceeding, in absence of evidence in Enquiry Proceedings, I am constrained to hold that misconduct alleged against workmen are not proved. Therefore I record my finding in Point No.1 in Negative.
10. Point No.2- In view of my finding in Point No.1 as record of Enquiry Proceeding is not produced by management- charges against workman Sunny and Patel are not proved, punishment of reduction of minimum pay scale for 3 years with cumulative effect cannot be sustained, it deserves to be quashed and set-aside. For above reasons, I record my finding in Point No.2 in Negative.
11. Point No.3- In view of my finding in Point No.1,2 charges against workman Shri Sunny and Patel are not proved, punishment of reduction of pay scale to minimum for a period of 3 years with cumulative effect deserves to be set-aside. Accordingly I record my finding in Point No.3.
12. In the result, award is passed as under:-
 - (1) The action of the management of Telecom Factory, Jabalpur in awarding punishment of reduction to the minimum of the pay scale for a period of 3 years with cumulative effect and not to grant annual increments for participating in Union activities in the factory on 5-0-88 to Shri A.J.Sunny, Section Supervisor and Shri M.K.Patel, Office Assistant is not proper and legal.
 - (2) Order of imposing punishment of reduction of pay scale to minimum to both the workers is set-aside.
 - (3) Management is directed to allow consequential monetary benefits to both the workmen A.J.Sunny and M.K.Patel.

Amount of monetary benefits be paid to the workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 888.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 18/2015) को प्रकाशित करती है, जा केन्द्रीय सरकार को 09.03.2017 को प्राप्त हुआ था।

[सं. एल-22011/02/2015-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th April, 2017

S.O. 888.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 18/2015) of the Central Government Industrial Tribunal-cum-

Labour Court, Bangalore as shown in the Annexure, in the Industrial Dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 09.03.2017.

[No. L-22011/02/2015-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 2nd FEBRUARY 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

C R No. 18/2015

I Party

The State President,
Bhartiye Khadya Nigam
Karmachari Sangh
No. 785, D-1, BDA Apartment,
Bangalore

II Party

The General Manager,
Food Corporation of India,
Regional Office No.10,
East End Main Road, Jayanagar 4th T block,
Bangalore - 560041

AWARD

The Central Government vide Order No.L-22011/02/2015-IR(CM-II) dated 08.05.2015 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the action of the management in transferring Shri. Hareesh Shetty, workman, from Regional Office, Food Corporation of India, Bangalore to BSC White Field is legal and justified? If not, to what relief the workman is entitled for?”

2. Brief details mentioned in the claim statement are as follows:-

The I Party states that, on 20.01.1989, the workman/Hareesh Shetty has been appointed as Assistant Grade-III General under Sports quota. In the month of February 2001, he has been promoted to the post of Assistant Grade-II General. The I Party/Workman is an internationally acclaimed sportsperson and has participated in innumerable events and contests in Hammer Throw event. The I Party has won accolade, and medals galore him and he brought laurels to the Nation in the said event. After the I Party has been selected as President for the Karnataka Region, a Notification dated 17.10.2013 came to be issued by the Assistant General Manager, Food Corporation of India, Head Quarters, declaring the names mentioned in the notification as the protected workmen. The I Party workman's name is at Sl.No.31. Even after the removal of Sri A. Shibu from the post of General Secretary of BKNK Sangh, he has falsely claimed to be the protected workman and he has also indulged in criminal activities by removing the notice board of the Food Corporation of India Association and breaking open the door of BKNK Sangh office. Therefore, the I Party/workman in capacity of President of the BKNK Sangh addressed a communication to the 2nd Respondent as per the letter dated 20.08.2013 to take action against Sri. A.Shibhu for showing his indecency. Further, one more representation has been submitted by the I Party workman to the 2nd Respondent as per the letter dated 29.08.2013. Further, a complaint has been made to the local police station by the I Party workman on 21.05.2014. It is submitted that without taking any action against Sri A.Shibhu, an order came to be passed by the II Party/Management transferring the I Party/Workman from the post of Assistant Grade-II General, District Office, Bangalore to District Office, Hubli as per the order bearing No. 091/2014/e.1 dated 04.06.2014. Further, Clause 15 of the transfer guidelines states that the sports person representing Zone/State may not be transferred out so long as he/she represents the concerned Zone/State. In spite of the aforesaid clear exemption, the impugned order has been passed by the 2nd Respondent transferring the I Party Workman from Bangalore to Hubli. In the meanwhile, on 20.09.2014, the I Party workman also participated in Asia Maters Athletic Championship held in Kitakami City, Japan. Further, due to the adamant ad non-cooperative attitude of the 2nd party, the protracted conciliation ended in failure notwithstanding the very honest and sincere efforts made by the Regional Labour Commissioner and finally the Conciliation Officer submitted a failure report the Government of India. Based on the report of the RLC, the Government of India has referred the dispute for Industrial adjudication on the file of this Hon'ble Court, referring the terms for adjudication as already stated. It is manifest that the impugned order passed by the 2nd Respondent transferring 1st Party to Buffer Storage Complex Whitefield is illegal, unjust and untenable. The impugned order passed by the 2nd party is in utter

contravention of its own transfer guidelines. Hence, on this ground also, the impugned order is liable to be set aside. The 1st party workman has been posted to the said place as an eye wash in the pretext of compliance of the order passed by the Hon'ble High Court. The 1st party workman has been subjected to transfer for his trade union activities and also to victimize him. Hence, the 1st Party has prayed to pass an award as prayed for in the claim statement.

3. On a careful perusal of material records, it is seen that RPAD notice has been sent to the II Party in Transaction No. A RK345401378 IN dated 26.10.2016, and served postal acknowledgment, also, received, regarding the RPAD notice served to II Party by this Court through Department of Post, Government of India. Still, no representation has been made by II Party and II Party also called absent.

4. The crucial point that arises for consideration in the present matter is, as follows:-

‘Whether the I Party is entitled to get relief as prayed for in the claim statement for the reasons stated herein?’

5. Point:-

In the present case, the workman namely. Sh. Hareesh Shetty, has filed the affidavit and also filed documents Ex-W1 to W5. On a careful and complete perusal of the said documents, it is found that the workman has filed relevant documents namely, Transfer Policy Guidelines as Ex-W1 and FCI Sports Promotion Board letter as Ex-W2 and 2nd party Office order as Ex-W3 and Email from FCI, Zonal Office South as Ex-W4 and also Notification of the FCI as Ex-W5 and also established that the 1st Party workman has been continuously harassed and victimised and not only he has been transferred and also, promotion has been with held. Further the 1st Party workman has no other option but to participate in the sports event and to win the gold medal and 2nd party, instead of appreciating 1st party has resorted to condemn him by transferring and also, by declining to promote him, although 1st party has been found eligible and qualified for promotion. Further, on a careful scrutiny of Ex-W1 to Ex-W5, it is found that there is significant, sufficient and substantial force in the said submission made by WW1. Further, 2nd party though served with notice of hearing, has not even present before this court and also, not raised any objection to the present case. Further, 2nd party has not established that the action has been taken against 1st party after, following the appropriate and proper rules and regulations. In such, circumstances, it is found that the 1st party is entitled to get relief as prayed for in the claim statement. Hence the following award is passed by this Tribunal.

AWARD

- The office order passed by the II Party, bearing Ref No.124/2014/E.I dated 17.07.2014, as the said order is unjust, illegal, malafide and contrary to the transfer guidelines dated 21.11.2002 and also amounts to unfair labour practice as defined in section 2(ra) read with V schedule of the ID Act.
- Also, the 2nd party shall release the promotion order as per the Office Order No.23/RPI/2013 dated 07.06.2013 which is issued by the Zonal Office Chennai.
- And further the II Party shall consider the Casual Special Leave as on duty dates from 18.06.2014 to 26.09.2014 by cancelling the leave applied by the workman.

Accordingly, award is passed without cost for the above mentioned peculiar facts and circumstances.

(Dictated, transcribed, corrected and signed by me on 2nd February, 2017)

V. S. RAVI, Presiding Officer

List of Witness on the side of I Party:

WW1	Sh. Hareesh Shetty, I Party
-----	-----------------------------

Exhibits marked on behalf of I Party:

Exhibits	Date	Description of Document
Ex W-1	21.11.2002	Transfer Policy Guidelines of FCI
Ex W-2	20.09.1999	DO letter of FCI, Sports Promotion Board
Ex W-3	07.06.2013	FCI Office Order No.23/RPI/2013
Ex W-4	21.04.2015	Fax/E-mail from FCI, Zonal Office South
Ex W-5	07.07.2014	Notification No. IR(P&ID)/9-2/2013

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 889.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार और अन्य, भोपाल एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 141/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/18/2000-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 5th April, 2017

S.O. 889.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 141/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, Telecom and others Bhopal and their workman, which was received by the Central Government on 08.03.2017.

[No. L-40012/18/2000-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/141/2000

Shri Jagdish S/o Madura Prasad,
Vill: Suthalia, Tehsil Biaora,
Rajgarh

...Workman

Versus

Chief General Manager,
Telecom, MP Circle,
Telecom Bhawan, Hoshangabad Road,
Bhopal (MP)

TDE, Rajgarh, At: Biaora,
Rajgarh

...Management

AWARD

Passed on this 14th day of February 2017

1. As per letter dated 21-6-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/18/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Jagdish S/o Mathura Prasad w.e.f. February-97 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Pages 2/1 to 2/4. Case of Ist party workman is that he was initially appointed as casual labour in November 1989 in Telecom Exchange, Biaora, Distt. Rajgarh. That since his initial appointment, he was working till February 1997. He was continuously working without break. He completed more than 240 days continuous service during each of the calendar year. He was eligible for regularization in the department. His services were terminated without any reason. The action of the management terminating his services is arbitrary, discriminatory, violative of principles of natural justice. That termination of his service without notice, without payment of retrenchment compensation is in violation of Section 25-F of ID Act. That after termination of his service, he is not gainfully employed, his family members are starving. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Pages 3/1 to 3/2 opposing claim of Ist party workman. 2nd party submits that workman did not worked for 240 days during any of the year. Appointment letter was not issued to him. There was no question of termination of services of workman. Workman worked for 107 days in 1987, 125 days in 1988, 53 days in 1989, 91 days in 1990, 84 days in 1991. The workman as engaged for casual work of repairing. Workman did not attend and automatically his services came to end. It is reiterated that as workman did not work for 240 days during any

of the year, there was no question of issuing notice or payment of retrenchment compensation. The claim of Ist party workman be rejected.

4. The perusal of record shows identical Written Statement is also filed on 12-12-2011.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Jagdish S/o Mathura Prasad w.e.f. February-97 is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

6. The term of reference pertains to legality of termination of services of Ist party workman. Ist party workman didnot adduce evidence. Evidence of workman was closed on 3-12-2013.

7. Management filed affidavit of witness of Shri Ramgopal supporting contentions in Written Statement filed by the management. Workman failed to cross examine witness of management. His evidence remained unchallenged. As workman has failed to adduce evidence, claim of Ist party is not supported by any evidence. For above reasons, I record my finding in Point No.1 in Affirmative.

8. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager, Telecom in terminating the services of Shri Jagdish S/o Mathura Prasad w.e.f. February-97 is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 890.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कैंन्टोनमेंट कार्यकारी अधिकारी, कैंन्टोनमेंट बोर्ड, महो, मध्य प्रदेश एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 31/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2017 को प्राप्त हुआ था।

[सं. एल-13012/2/2005-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 5th April, 2017

S.O. 890.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 31/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Cantonment Executive Officer, Cantonment Board, Mhow, Madhya Pradesh and their workman, which was received by the Central Government on 08.03.2017.

[No. L-13012/2/2005-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/31/2005

Smt. Raju Bai, W/o Shri Prakash
R/o 177, Yadav Mohalla,
Near House of Shri Jawji, Mhow
Mhow (MP)

...Workman

Versus

Cantonment Executive Officer,
Cantonment Board.
Mhow (MP)

... Management

AWARD

Passed on this 16th day of February, 2017

1. As per letter dated 27-4-05 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-13012/2/2005-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Cantonment Executive Officer, Cantonment Board, Mhow in terminating the services of Smt. Raju Bai W/o Shri Prakash w.e.f. 28-8-87 is just and legal? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party filed statement of claim at Page 5/1 to 5/3. Case of Ist party is that she belongs to SC ST category. She was appointed on post of sweeper on 3-3-94 after conducting process of recruitment holding personal interview. She worked sincerely. She was continuously working without any interruption from her initial appointment till date of termination 28-8-97. Her appointment was against vacant post of sweeper. She was paid Rs.750 per month obtaining her attendance maintained in the register. She continuously worked more than 240 days each of the year. He claims to be employee covered under Section 25 B of ID Act. Her services were discontinued on 28-8-97 without assigning any reasons. She was not paid compensation. Management not followed provisions of Section 25-F,N of ID Act. Termination of her service amounts to illegal retrenchment. After her termination, management has made appointments of sweeper. Intentionally she was not considered. After termination of her service, she is facing financial hardship. After termination of her service, many post were lying vacant but management did not consider to engage her. On such ground, workman prays for her reinstatement with consequential benefits.

3. 2nd party filed Written Statement at Page 10/1 to 10/4 opposing claim of workman. The contentions of 2nd party are that Ist party workman was engaged on daily wages Rs.28 per day on temporary basis since March 1994. Her engagement was to meet out emergent requirements. Her husband Shri Prakash is working with 2nd party as permanent sweeper. The engagement of Ist party was without following process for regular or temporary appointment. When vacancies were available, Ist party workman was given liberty to apply for the post. She was not found eligible. Ist party cannot claim regular appointment on the post of sweeper as he was working on daily wages. The termination of workman was in the year 1997. The dispute is raised in 2003 is not tenable due to delay. 2nd party has reiterated that Ist party workman was engaged on daily wages for emergent work. Her services were not terminated by management, workman was not appointed against vacant post. That workman was engaged on daily wages Rs.28 per day in March 94 without following selection process. Her appointment was not against sanctioned post. That Ist party workman had not completed 240 days continuous service. It is denied that Ist party workman was orally discontinued from work. Ist party had not immediately approached Competent Authority for redressal of grievances after the alleged termination of his service. Violation of Section 25-F,N is denied. That the management had appointed safaiwala in 1999 after selecting the candidates holding screening tests and considering the merit. Ist party was not found suitable. On such ground, 2nd party submits that claim of workman is not tenable.

4. Ist party filed rejoinder at Page 11/1 to 11/2 reiterating her contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Cantonment Executive Officer, Cantonment Board, Mhow in terminating the services of Smt. Raju Bai W/o Shri Prakash w.e.f. 28-8-87 is just and legal?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

REASONS

6. Point No.1 The term of reference pertains to legality of termination of services of Ist party on 28-8-97. Ist party filed affidavit of her evidence. She has stated in her affidavit that on 3-3-90, after interview and physical test, she was

engaged as sweeper on 3-3-94. That she was continuously working till 28-8-97. She was paid Rs.750 per month. Her services were terminated without notice. She was not paid retrenchment compensation, she completed more than 240 days continuous service during each of the year. She was continuously working for about 4 years. In her cross-examination, Ist party says she was called for interview on 3-3-99 and physical test on 20-3-99. Her averments in statement of claim she was called for interview on 3-3-90 and physical test on 20-3-90 is incorrect. She denies that she was not called for interview before her engagement on 1994. She was engaged on daily wages. She was paid monthly wages. She denies that her name was not sponsored through Employment Exchange. She was unable to tell whether in her Employment Exchange card, entries was taken. That she had not pleaded in her statement of claim or averred in her affidavit of evidence that clerk had prevented her from working. She had participated in interview held in 1999. She was unable to tell whether she was found not suitable after the interview. The candidate selected in 1999, she has not filed the case against them. Her husband Prakash is still working on regular post. Her husband was working in the year 1994. She denied suggestion that in 1997, she got better job and stopped the working with 2nd party. That she had not made efforts for getting the work.

7. 2nd party filed affidavit of evidence of witness Rajendra Pawar supporting contentions in Written Statement filed by 2nd party. In March 1994, Ist party was engaged on wages Rs.28 per day. Her engagement was purely temporary on need basis. No process for regular or temporary appointment was followed. Ist party himself absconded her services were not terminated. Ist party had appeared for interview, she was not found eligible for selection committee. Ist party was not continuously working more than 240 days during any year. The dispute raised in the year 2003 is afterthought. In his cross examination, management's witness says Ist party was engaged on daily wages for cleaning work. Permission of higher authorities was not taken at the time of her engagement. He was unable to tell how many posts of sweepers were vacant in 1994. On the basis of record, he stated in his affidavit that workman had not worked more than 240 days during any year. Attendance of Ist party was maintained. He had seen attendance register, witness shown readiness to produce the same. Ist party was paid at the end of month. Ist party was not served with notice, retrenchment compensation was not paid to her. In 1999, Ist party was called for interview for regular appointment. It was necessary to pass skill test and approval of committee. The contents in para-2 of Written Statement that besides Ist party, other workers working on daily wages is correct. Management's witness admitted reply submitted before ALC. The working days of Ist party are shown more than 240 days preceding 12 months of her disengagement in August 1997 is not in dispute. As per evidence of management's witness, notice of termination was not issued, Ist party workman was not paid retrenchment compensation though the workman had worked continuously more than 240 days as per the document Exhibit W-1. Therefore termination of services of Ist party is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

8. Point No.2- 2nd party in its Written Statement has pleaded that alleged termination of workman was in 1997 and dispute raised is in 2003 is not tenable due to delay. On said point, reliance is placed on ratio held in case between-

Nedungadi Bank Ltd. versus K.P.Madhavankutty and others reported in 2000(2)SCC-455. Their Lordship considering workman was dismissed after lawfully and properly conducting the disciplinary proceedings, his dismissal was upheld in appeal. Dispute raised after 7 years was held bad on both ground of delay as well as non-existence of industrial dispute.

In case between Prabhakar versus Joint Director Soriculture Department reported in AIR 2016-SC-2984. Their Lordship held no period of limitation is prescribed. Limitation doesnot apply. The dispute alleging termination as wrongful and demanding reinstatement not raised by workman for 14 years , dispute no longer can be held to exist and there is no live dispute.

In present case, as per pleadings in Written Statement, dispute was raised in 2003, alleged termination of Ist party was of 18-8-97. Ratio held in the case cannot be applied to present case.

9. On this point learned counsel for Ist party Shri Arun Patel relies on ratio held in case between-

Ajaib Singh versus Sirhind Co-operative Marketing cum processing Service Society Ltd and another reported in 1999(6)SCC-82. Their Lordship dealing with effect of delay and latches held employer's plea of delay in seeking reference held not sufficient to deny relief to the workman.

In present case, management has raised contentions about delay in raising dispute in Written Statement. Delay appears about 6 years in raising dispute. Considering ratio held in the case, the dispute cannot be rendered untenable. The relief sought by workman can be suitably moulded. In above cited case, their Lordship also considered ratio held in case between HMT Ltd versus Labour Court- delay of 14 years invoking jurisdiction of court instead of full wages, 60 % backwages with reinstatement was allowed.

In case between Jasmer Singh versus State of Haryana and another reported in 2015(2)SCC(L&S)-46- 3 years delay in approaching Tribunal was held inconsequential since no period of limitation is prescribed under the Act.

In view of Ajaib Singh case of 1982, considering the delay in raising dispute, relief can be suitably moulded.

10. Turning to the point whether Ist party workman is entitled for reinstatement with backwages in view of termination is found illegal as per my finding in Point No.1. the evidence of Ist party workman is in cross-examination, it is clear that she participated in selection process in the year 1999. She was interviewed, she claims ignorance whether she was not found suitable. Evidence of management's witness on the point is that selection committee found Ist party not eligible for selection.

11. Learned counsel for Ist party Shri Arun Patel in support of claim for reinstatement with backwages relies on ratio held in case between-

Jasmer singh versus State of Haryana and another reported in 2015(2)SCC(L&S) 46. The award passed by Industrial Labour Court for reinstatement with full backwages was upheld.

In case between Gaurishankar versus State of Rajasthan reported in 2016(1) SCC(L&S)-546. Their Lordship held modification of award by awarding compensation in lieu of reinstatement by High Court is contrary to the well settled principles of law laid down in a catena of cases by Supreme Court.

In case between Ajay Pal Singh versus Haryana Warehousing Corporation reported in 2015(6)SCC-321. Their Lordship dealing with violation of Section 25-F of ID Act. Provision is in conformity with Articles 14 & 16 of the constitution and compliance therewith even by public sector employer is mandatory. The retrenchment of workman was found invalid for violation of Section 25-F of ID Act, the relief of reinstatement with full backwages was awarded by Labour Court was restored.

In case between Tapash Kumar Paul versus BSNL reported in 2014(4)S.C.R.875. their Lordship held Division Bench of High Court gravely erred in ignoring the normal rule that ordinarily a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. Relying upon the view expressed in Deepali Gundu case to the effect that the order of termination affects the entire family of the employee and deprives them of food, education and advancement in life. The appellant was reinstated with full back wages. Their Lordship observed it is no doubt that court may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds (1) where industry is closed, (ii) where employee has superannuated or going to retire shortly and no period of service is left to his credit, (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated and (iv) when he has lost confidence of the management to discharge duties.

In case between Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya and others reported in 2013(10)SCC-324. Their Lordship held denial of back wages would amount to indirectly punishing the employee and rewarding the employer by relieving him of the obligation to pay back wages. Where employer wants to deny back wages or contest the employee's entitlement to get consequential benefits. Employer has to plead and prove that employee was gainfully employed during the intervening period.

In case between Oshiar Prasad and others versus employers in relation to management of sudamdih coal washery of M/S Bharat Coking Coal Limited, Dhanbad, Jharkhand reported in 2015(1)SCC(L&S) 789. Their Lordship held Tribunal while answering reference as to confine its enquiry to questions referred and has no jurisdiction to travel beyond or and terms of reference. The appellants were held entitled to compensation.

In case between Sudarshan Rajpoot versus UP State Road Transport Corporation reported in 2015(2)SCC-317. Their Lordship considering services of appellant workman who was continuously working more than 3 years and rendered more than 240 days service in calendar year terminated without notice amount to unfair labour practice. Labour Court was justified in directing reinstatement with consequential benefits.

In case between ONGC Ltd. versus Petroleum Coal Labour Union reported in AIR-2015-SC-2210. Ratio pertains to denial of regularization under provisions of certified standing orders.

The terms of reference in present case not pertain to denial of regularization, ratio held in the case cannot be applied to case at hand.

12. Learned counsel for 2nd party Shri P.C.Chandak relies on ratio held in case between

Kanpur Electricity Supply Company Limited versus Shamim Mirza reported in 2009(1)SCC-20. Their Lordship dealing with question of backwages held the entitlement of an employee to get reinstated doesnot necessarily result in payment of full or partial backwages, which is independent of reinstatement. While dealing with the prayer for backwages, factual scenario, equity and good conscience and a number of other factors like manner of selection, the nature of appointment, period for which the employee has worked with the employer etc have to be kept in view.

I appreciate the efforts taken by counsel for Ist party Shri Arun Patel, however facts of present case are different. Considering said aspects of the matter when Ist party workman was engaged on daily wages on temporary basis, prior to the process for selection on regular post was initiated, her services were terminated on 28-8-97 violating Section 25-F of ID Act. The Ist party workman had worked about 4 years, compensation Rs.75,000/- would be appropriate. Accordingly I record my finding in Point No.2.

13. In the result, award is passed as under:-

- (1) The action of the management of Cantonment Executive Officer, Cantonment Board, Mhow in terminating the services of Smt. Raju Bai W/o Shri Prakash w.e.f. 28-8-87 is not proper and legal.
- (2) 2nd party is directed to pay compensation Rs.75,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 891.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूरसंचार जिला प्रबंधक, दूरसंचार विभाग, पालनपुर-385001 एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 463/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.03.2017 को प्राप्त हुआ था।

[सं. एल-40011/27/2000-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 5th April, 2017

S.O. 891.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 463/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Telecom District Manager, Telecom Department, Palanpur-385001 and their workman, which was received by the Central Government on 03.03.2017.

[No. L-40011/27/2000-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 21st February, 2017

Reference: (CGITA) No. 463/2004

The Telecom District Manager,
Telecom Department,
Palanpur, Telecom District,
Joravar Palace,
Palanpur (B.K.) – 385001

...First Party

V/s

Shri Sabatsingh Mulabhai Patel,
Village – Salia (Kheda Falia),
PO: Sant Road, Tal. Morva Hadaf,
Panchmahal (Gujarat)

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party : Shri J.K. Ved

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40011/27/2000-IR(DU) dated 15.01.2002 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Telecom District Manager, Telecom Department, Palanpur in terminating the services of their workman Shri Sabatsingh Mulabhai Patel from 11.10.1995 is legal and justified? If not, to what relief the workman is entitled?”

1. The reference dates back to 15.01.2002. The second party submitted the statement of claim Ex. 10 on 28.04.2004 and the first party submitted the written statement Ex. 11 on 04.10.2004. Now today on 21.02.2017, Shri J.K. Ved, the advocate for the second party, requested to withdraw the reference as appears that the workman has died on 21.04.2006.

2. Therefore, the reference is disposed of as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 892.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार और अन्य, भोपाल एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 115/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/17/2000-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 5th April, 2017

S.O. 892.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 115/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, Telecom and others Bhopal and their workman, which was received by the Central Government on 08.03.2017.

[No. L-40012/17/2000-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/115/2000

Shri Ranglal Chamar, S/o Shri Jaganath Chamar,
R/o Village Lakanwas,
Tehsil Biaora, Rajgarh,
Rajgarh

...Workman

Versus

Chief General Manager,
Telecom, MP Circle,
Telecom Bhawan, Hoshangabad Road,
Bhopal

TDE, Rajgarh,
At Biaora,
Rajgarh

...Management

AWARD

Passed on this 2nd day of February 2017

1. As per letter dated 21-6-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/17/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Ranglal Chamar S/o Jaganath Chamar w.e.f. December 98 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/4. Case of Ist party workman is that he was appointed in July 1994 in 2nd party department at Lakhanwas, Distt. Rajgarh as casual labour. He was posted at Narsingarh, Kurawar and lastly posted in Narsingarh. He was working honestly to satisfaction of his superiors. Since his initial appointment in July 994 till December 98, he was continuously working without any break. He completed more than 240 days continuous service in a calendar year on permanent vacant post. He acquired status of permanent employee. His services were dispensed in December 1998 without following statutory provisions. Termination of his service without sufficient reasons is arbitrary and in violation of principles of natural justice. Workman has reiterated that he completed 240 days continuous service, his services were terminated without reasons or any hearing is illegal. Termination of his service is in violation of Section 25 of ID Act. The act of management is by way of victimization. On such ground, Ist party workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of workman. Case of 2nd party management is workman had never worked with the management of 2nd party. Reference is not tenable. It is reiterated that workman was never appointed by the management in Sub Division. There is no point of allowing regularization of workman as Ist party workman never worked in 2nd party. There is no question of violation of Section 25-F of ID Act. There is no question of working for 240 days in a calendar year. Consequently workman is not entitled for retrenchment compensation or absorption in service. 2nd party submits workman is not entitled to any relief.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Ranglal Chamar S/o Jaganath Chamar w.e.f. December 98 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

REASONS

5. The term of reference pertains to legality of termination of services of workman. Ist party workman filed affidavit of his evidence. In his affidavit of evidence, workman says he was engaged as casual labour in July 94. Since his appointment as casual labour, he was working continuously till 1998. He worked with devotion at Narsingharh, Kurawar and lastly at Narsingharh. He completed more than 240 days working during each of the calendar years. In December 1998, his services were orally discontinued, he was not served with notice or paid one months salary. He was not paid retrenchment compensation. The documents about his working, attendance register, muster roll are in custody of 2nd party. In his cross-examination, Ist party workman says post on which he was working was not advertised. Appointment letter was not given to him. He was doing work of digging ditches or raising poles. He was paid wages at end of month. Any document about payment of wages was not given to him. At the time of payment, his signatures were obtained on the papers. He denied that he was not working in the department at any time.

6. Management filed affidavit of witness Shri Shailendrda Surjan. witness of management in his affidavit of evidence states that workman was not appointed, he did not work in the department. Workman was never engaged on casual basis or otherwise. There was not question of his completing more than 240 days in a calendar year. There was no question of paying retrenchment compensation to him. Management's witness in his cross says he is posted at

Rajgarh office in July 2013. He was not posted in Rajgarh office during the period July 94 to Dec-98. He had seen staff service book. The service book of workman was not found. The service book of daily wage employees is not maintained. Daily wage employee was paid wages by the officer. Daily wage employees used to be engaged as per need. Their attendance register is not maintained. The record of payments to daily wage employees was maintained by the concerned officer. In his further cross, management's witness was unable to tell during July 94 to Dec-98, who was the officer dealing with payment to daily wage employee. Work of fault and joint was taken from workman. Management's witness further explained that work of cable fault and joints was done by daily wage employees and not by the workman. Presently said work is done through contractor. Any documents related to the workman are not produced. Workman was not served with notice. He was not paid retrenchment compensation. Considering the evidence of management's witness in his cross examination that the record about payment to the daily wage employees was maintained by concerned officer, work of cable fault and joint was taken from workman, it is clear that if the workman was working with 2nd party, management witness was not posted at Rajgarh during 1994 to 1998. He has no personal knowledge. The service book of daily wage employee is not maintained therefore there was no question to see service book of workman by the witness of management. The concerned officer who deal with payment of daily wage workers is not examined.

7. Learned counsel for Ist party Arun Patel relied on ratio held in case between

Director, Fisheries Terminal Department versus Bhikubhai Meghajibhai Chavda reported in 2010(2)MPLJ-30. Their Lordship dealing with Section 25B of ID Act and continuous service. Workman hired on a daily wage basis deposed that he had worked for 240 days during the period 1985 to 1999 burden of proof shifts to the employer to prove that he did not complete 240 days of service in the requisite period to constitute continuous service.

In present case, the evidence of workman that he was working more than 240 days during each of the year July 94 to December 98. Management's witness in his cross has admitted work of cable fault and joint were taken from workman. Management has not adduced evidence in rebuttal that workman had not completed 240 days continuous service. The application for production of documents was filed by workman on 25-8-05. Though the exparte order against 2nd party management was called back and management filed Written Statement, no reply is filed to the application for production of documents and no evidence in rebuttal is also adduced by management. Evidence of workman deserves to be accepted. As per evidence in cross examination of management's witness, workman was not served with notice, he was not paid retrenchment compensation. Therefore termination of workman is in violation of Section 25-F(a,b) of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

8. Point No.2- In view of my finding in Point No.1 termination of services of workman is illegal for violation of Section 25-F(a,b) of ID Act, question remains for consideration is whether workman is entitled for reinstatement with backwages. Workman in his cross examination says post was not advertised, appointment letter was not given to him. Workman was engaged on daily wages.

9. Learned counsel for Ist party Arun Patel in support of relief of reinstatement with backwages relies on ratio held in case between

Tapash Kumar Paul versus BSNL and another reported in 2014(4)SCR-875. Their Lordship dealing with termination in violation of Section 25-F of ID Act held it is no doubt true that a Court may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on justifiable grounds- (i) where the industry is closed, (ii) where the employee has superannuated or going to retire shortly, (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated, (iv) when he has lost confidence of the management to discharge duties. Ist party workman was not issued appointment letter, he was engaged on daily wages. At Page 885, their Lordship observed the Court will deny relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases, the court may mould the relief but ordinarily the relief to be awarded must be reinstatement with full back wages.

Evidence of workman that he is unemployed after termination of his service is difficult to accept, how he could survive without any earning all those years. Therefore claim for backwages would not be justified in present case.

Reliance is also placed in case between Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya and others reported in 2013(10)SCC-324. Their Lordship dealing with illegal termination allowed reinstatement with backwages.

As the evidence of workman that he was unemployed after termination of his service appears not acceptable. In my considered view, relief of reinstatement without backwages would be appropriate. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager, Telecom in terminating the services of Shri Ranglal Chamar w.e.f. December 98 is not proper and legal.
- (2) Termination of workman is set-aside. 2nd party is directed to reinstate workman in his original post but without backwages.
- (3) In the circumstances, 2nd party shall pay cost of Rs.3000/- to the workman.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 893.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार विभाग, मेहसाना और अन्य, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 92/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/112/97-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 5th April, 2017

S.O. 893.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 92/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom Department, Mehsana and other, Gujarat and their workman, which was received by the Central Government on 03.03.2017.

[No. L-40012/112/97-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 23rd February, 2017

Reference: (CGITA) No. 92/2004

1. The General Manager,
Telecom Department,
Mehsana (Gujarat) – 384001
2. The Divisional Engineer,
Telecom,
Padmavati Complex,
Mehsana (Gujarat) – 384001

...First Party

V/s

Shri Mohammed Azgar M. Ansari,
C/o Abdul Subhan, L.M.P. Telecom,
Kukarwada,
Mehsana (Gujarat) – 384001

...Second Party

For the First Party : Shri N.K. Trivedi

For the Second Party : Shri Z.M. Kadri

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/112/97-IR(DU) dated 16.06.1998 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the department of Telecommunication in denying temporary status to Shri Mohhamed Azgar M. Ansari, Muster Roll workman from 31.05.1989 but terminating his service w.e.f. 11.09.1995 without notice or compensation is legal and justified? If not, to what relief the concerned workman is entitled to and from which date?”

1. The reference dates back to 16.06.1998. In response to the notice, the second party workman Mohhamed Azgar M. Ansari submitted his statement of claim alleging that he was engaged as casual workman by the first party, General/Divisional Manager, Telecom Department, Mehsana in November 1985 where he worked for 137 days in 1985-86, 311 days in 1986-87 and 224 days in 1987-88. He also completed 159 days in 1988-89 but his services were terminated suddenly on 11.09.1995 by the first party without issuing show notice or paying notice pay with ulterior and malafide motive. First party has also given permanent appointment to another workman who joined as casual workman later. He has further alleged that first party did not offer him any work from 1999 to 10.09.1995 despite a demand to work made by him to the first party. He met several times to the Sub-Divisional Officer of Telecom to engage him and to give him work but to no result. Thus he has prayed for appointment as a permanent employee.

2. The first party submitted the written statement Ex. 5 denying the averments made in the statement of claim alleging that the reference is not tenable, being vague in law, therefore, liable to be dismissed as this tribunal has no jurisdiction to try it. He has further alleged that the first party organisation is not an industry as per the decision made in P.K. Vijay Nair V/s Assistant Superintendent of Post Officers 1995 ATC 414 wherein it has been held by the Division Bench of the Central and Industrial Tribunal that where the rules under Article 309 of the Constitution of India or otherwise have been framed for recruitment of the services, the provisions of the Industrial Disputes Act shall not apply. The second party workman Mohhamed Azgar M. Ansari has no locus standee to claim for appointment as a permanent employee because said appointment can only be made by following a due procedure of recruitment. It is further alleged that the workman was not regular employee. He was given casual work on the new basis and worked 137 days in 1985-86, 312 days in 1986-87, 224 days in 1987-88 and 66 days in 1988-89. Since the he has been absconding and has not reported to work. The allegation that the first party department did not give him work after 1989 is incorrect and far from truth. The directions of the Supreme Court dated 17.04.1990 is not applicable to this case, therefore, he is not entitled to appointed as regular employee as he himself left the casual work and remained unavailable for a long time till he raised the dispute. It has been further alleged that the he casual job was never terminated and he himself left the job. Therefore, no relief can be granted to him.

3. On the basis of the pleadings, the following issues arise.

Issue No. i: Whether the action of the department of Telecommunication in denying temporary status to Shri Mohhamed Azgar M. Ansari, Muster Roll workman from 31.05.1989 but terminating his service w.e.f. 11.09.1995 without notice or compensation is legal and justified?

Issue No. ii: To what relief, if any, the workman is entitled?

4. The second party workman submitted the number of documents vide list Ex. 6 showing that he worked for 137 days in Kalol in the year 1986-87, 118 days from 03.04.1986 to 31.08.1986, 29 days in Vijapur from 02.02.1986 to 30.09.1986, 218 days from 10.10.1986 to 31.07.1987, 172 days in Vijapur from 06.10.1987 to 28.03.1988. All these documents are also filed by first party, therefore, can be said to be admitted and can also be read in evidence.

5. **Issue No. i:** The second party workman Mohhamed Azgar M. Ansari was examined vide Ex. 16 on 04.03.2001 in State Industrial Tribunal and re-examined in this tribunal on 16.05.2004 wherein he reiterated the averments made in the statement of claim.

6. On behalf of the first party witness Jayantilal Nathalal Patel, Divisional Telecom Engineer, Kalol was examined on 16.08.2005 wherein he has stated on oath that he has been serving as Divisional Engineer Telecom Kalol. He has no personal knowledge and acquaintance with the second party workman. He has stated on the basis of the record available on the record. The workman was engaged in the year 1985 as a casual worker for installation and fault of the telephone lines. He did not work continuously. He can state that the second party workman worked for 240 days in the year 1986, 1987 and 1988. He was not terminated by the office rather he stopped coming to the office for the casual work since 1989. No notice was served on him for non-coming. He came in 1995 for work. He was not given work. He has further stated that notice was not served on him as he himself stopped coming and notice is always served on the regular employee. He doesn't know as to whether casual labours prior to 1988 were made regular or not. He also

doesn't know that the workmen named Kamlesh Pal, Rajubhai, Mahesh Parmar, Rafiq Hansari, Ranchhod Thakur were engaged or not. It is true that this workman worked for more than 240 days in the last year prior to termination. No inquiry was ordered or made for his long absence from 1989 to 1995.

7. The first party advocate submitted the following written arguments which are recorded as under:

- i. The first party is a Central Govt. undertaking and providing the services throughout the territory of nation. It has engaged employee as per their requirements. The second party was a casual daily worker engaged by the first party on where and when requirement basis on daily wages.
- ii. The second party has admitted that he was a daily rated casual workman at Ex. 13 in his chief examination. According to the judgement of Supreme Court of India in the case of State of Himachal Pradesh V/s Suresh Kumar Varma and Anr 1996(2)SLR PAGE 321 it is stated – Appointment/Ad hoc appointment – appointment on daily wage basis is not an appointment to a post according to the rules – state is bound to follow the rules made by it – Selection has to be according to recruitment rules. In the present said case the second party was a casual daily wagger and his appointment was not made according to recruitment rules and hence cannot be entitled to reinstate with first party.

Supreme Court of India has also decided in the case of Himanshukumar Vidhyarthi and Others and State of Bihar FLR 1997 (76) Page 2367 it state that Industrial Dispute Act – Section 25 – F daily wagger - termination of service – service of daily wagger, a temporary employee is terminated – he had no right to the post – his disengagement held not arbitrary – his case cannot be treated under the Industrial Dispute Act. Looking to this decision also the second party has no right for reinstatement.

Supreme Court has also held in Indian Drugs & Pharmaceutical Ltd. V/s workman in Indian Drugs & Pharmaceutical Ltd. – that rules of recruitment cannot be relaxed and court/tribunal cannot direct regularization of temporary appointment do hors rules nor direct continuation of their services or payment of regular salaries to them. {2006(0)GLHEL-SC 38282}

Even in the case of Secretary State of Karnataka and others V/s Umadevi (3) and others 2006 Supreme Court Cases (L&S) 753 is stated as –J- Appointment – modes of appointment - permissible modes – absorption, regularization, or permanent continuance of temporary, contractual, casual, daily-wage ad hoc employee appointed/recruited do hors the constitutional scheme of public employment on issuance of directions by court therefore – held issuance of such directions amount to creating another mode of public appointment, which is not permissible. So the concerned second party is not entitled to reinstate with first party.

- iii. The second party has worked 137 days in the year 1985-86, 311 days in the year of 1986-87, 224 days in the year of 1987-88, 159 days in the year of 1988-89 and as such he had not worked continuously for 240 days in each year during he worked as per his examination in chief at Ex. 16. Thus he cannot claim for the reinstatement with the first party.
- iv. The second party has stop coming for work at his own accord and was not orally terminated by the first party. He was daily rated casual workman not employed by following due procedure like regular or permanent employee and hence he cannot be reinstate with full back wages. As such question does not arise to give him any legal notice and to hold any departmental inquiry for absenteeism against him. He cannot reinstate with full back wages.
- v. The second party was daily rated casual workman not appointed by following due procedure of law and the second party has stop coming for work at his own accord so the question doesn't arise of following due procedure of law for termination of his employment as well as with prejudice mind.
- vi. It is also far from the truth that the daily rated workman those ae working with him are made regular. It is also not true that the second party has met the officer of first party for work.
- vii. The second party has failed to prove before the Hon'ble Court that he has tried for employment and not produce any documents for the same. The burden of proof lies on the second party as per the Supreme Court Judgement 2005 LLR 275 in Kendriya Vidyalay Sangathan and Anr V/s S.C. Sharma.
- viii. The second party has raised the dispute after long period and no any justification is mentioned and hence no any relief should be granted in the interest of justice.

8. It is noteworthy that both the parties have admitted that the second party workman during the years 1986, 1987, 1988 and 1989, he worked for more than 240 days but the second party workman has not lead any evidence as to whether he was denied to work from 1989 to 1995 by the first party by way of submitting the correspondence with the authorities of the first party or that he had been actually serving the first party from 1989 to 1995. In the absence of the

said evidence, it can be assumed that he left his job in 1989 and suddenly appeared in 1995 claiming his regularisation in the first party establishment. Thus a person who himself left the job cannot be permitted to take advantage of his misconduct of absconding from the job for a long period of 6 years from 1989 to 1995 without any satisfactory reasons.

9. Thus in the light of the aforesaid reasons, the second party workman is not entitled for any relief and the denial of the relief by the first party is legal and justified.

10. Thus, the reference is disposed of accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 894.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार विभाग, मेहसाना और अन्य, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 875/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/35/2000-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 5th April, 2017

S.O. 894.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 875/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Telecom District Manager, Telecom Department and other, Amreli, Gujarat and their workman, which was received by the Central Government on 30.03.2017.

[No. L-40012/35/2000-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 16th March, 2017

Reference: (CGITA) No. 875/2004

1. The Telecom District Manager,
Telecom Deptt.,
Amreli (Gujarat)
2. The Divisional Engineer Telecom,
Telecom Deptt.,
Amreli (Gujarat)

...First Party

V/s

Shri Mohanbhai Shamjibhai Kambodiya
C/o
J.B. Rajyaguru,
S/10, Sahjanand Mkt.,
Station Road,
Amreli (Gujarat)

...Second Party

For the First Party : P.V. Kharsani

For the Second Party : R.C. Pathak

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/35/2000-IR(DU) dated 30.05.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the department of Telecom, Amreli in denying engagement as full time sweeper to Shri Mohanbhai Shamjibhai Kambodiya as per letter No. E-2/34/98/1500 dated 28.08.1989 w.e.f. 11.03.1995 and thereafter terminating his services w.e.f. 31.01.1999 in the guise of termination of contract is legal and justified? If not, to what relief the concerned workman is entitled?”

1. The reference dates back to 30.05.2000. The second party submitted the statement of claim Ex. 5 on 13.01.2003. The first party submitted the written statement Ex. 11 on 18.07.2005. Since then both the parties have been absent and the advocate Shri Chintan Goyal and Shri R.S. Pathak vide application Ex. 12 has stated that the workman has not been contacting him despite knowledge. Therefore, it appears that the second party workman is not willing to prosecute the reference.

2. Therefore, the reference is disposed of with the observation as under: the action of the department of Telecom, Amreli in denying engagement as full time sweeper to Shri Mohanbhai Shamjibhai Kambodiya as per letter No. E-2/34/98/1500 dated 28.08.1989 w.e.f. 11.03.1995 and thereafter terminating his services w.e.f. 31.01.1999 in the guise of termination of contract is legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 895.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डाकघर के अधीक्षक, सामान्य विभाग, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 1084/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/24/96-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 5th April, 2017

S.O. 895.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 1084/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Telecom Superintendent of Post Office, General Division, Gujarat and their workman, which was received by the Central Government on 30.03.2017.

[No. L-40012/24/96-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 17th March, 2017

Reference: (CGITA) No. 1084/2004

The Supdt. Of Post Office,
General Division,
Gondal (Gujarat) – 360311

...First Party

V/s

Shri H.S. Vania,
EDBPM, Sanathali,
Via – Vasavad, Ta-Jasoan,
Rajkot (Gujarat)

.....Second Party

For the First Party : Shri P.M. Rami

For the Second Party : Shri B.B. Gogia

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/24/96-IR(DU) dated 23.02.1998 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of Sr. Superintendent of Post Offices, Gondal Division, Gondal in terminating the services of Shri H.B. Vania, EDBPM, Sanathali is legal and justified? If not, to what relief the workman is entitled to?”

1. The reference dates back to 23.02.1998. The second party submitted the statement of claim Ex. 2 on 06.08.1998 and the first party submitted the written statement Ex. 8 on 12.09.2002. Since then the second party has not been leading evidence, therefore, a fresh notice Ex. 13 was issued to both the parties to appear on 13.04.2011 thereafter on 30.11.2011, the second party submitted the application Ex. 15 for amending the statement of claim, same was allowed on 08.01.2016. But since then the second party has not been leading evidence. On 27.01.2017 after number of dates, Advocate B.B. Gogia who was representing the second party withdrew his vakalatpatra. It is noteworthy that the second party has been absent in person since last several dates, therefore, on 27.01.2017, the second party was given last opportunity for giving evidence even he was absent and the case was listed for 17.03.2017 for evidence. But he did not appear on 17.03.2017 for leading evidence. Shri B.B. Gogia has also submitted a letter dated 12.07.2014 signed by the workman that he has taken his file from Shri B.B. Gogia.
2. The said conduct of the workman reflects that he is not willing to prosecute the case.
3. Therefore, this tribunal has no alternative but to dispose of the reference with the observation as under: “the action of the management of Sr. Superintendent of Post Offices, Gondal Division, Gondal in terminating the services of Shri H.B. Vania, EDBPM, Sanathali is legal and justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2017

का.आ. 896.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार विभाग, भोपाल, मध्य प्रदेश व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 185/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/366/2000-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 5th April, 2017

S.O. 896.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 185/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, Department of Telecommunication, Bhopal and others, Madhya Pradesh and their workman, which was received by the Central Government on 08.03.2017.

[No. L-40012/366/2000-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/185/2000**

Shri Saabir Khan C/o Ruhi Tailor,
Rashid Khan, JP Nehru Colony,
Opp Union Carbide, Bhopal (MP)

... Workman

Versus

Chief General Manager,
Deptt. Of Telecommunication,
Hoshangabad Road, MP Circle, Bhopal (MP)

DET, Deptt. of Telecom,
Near Gayathri Mandir, Hanuman Mandir Chouraha,
Ghuna

... Management

AWARD

Passed on this 1st day of February 2017

1. As per letter dated 30-10-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/366/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Chief General Manager, Telecom District Engineer Telegraph in terminating Shri Saabir Khan S/o Shri Mohd., Murteja Khan w.e.f. 1-3-98 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/4. Case of Ist party workman is that he was initially appointed as Driver from 1-4-93. He was continuously working till 1-3-98. That he had completed more than 240 days continuous service during each of the calendar years. He claims to be employee covered under Section 25 B of ID Act. He worked to the satisfaction of his superiors. That he should have been considered for regularization. In spite of regularizing his services, his services were terminated without notice. He was not paid retrenchment compensation. His termination is in violation of Section 25-F of ID Act and as such illegal retrenchment. That 2nd party also violated Section 25 G,H of ID Act, Rule 77, 78 of ID Rules 1957. After termination of his service, he is unemployed despite repeated efforts made by him. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 4/1 to 4/3 opposing claim of Ist party workman. 2nd party denies that workman appointed on 1-4-93 and he was continuously working till -3-98. It is submitted that since 1985, no outsiders are posted at SSA, Guna. Workman was not appointed. There is no question of his consideration as employee under Section 25 B of ID Act. It is reiterated that Ist party was never appointed in Telecom Department, no appointment letter was issued to him. As per the procedure in department for petty workers, labours engaged for specific work for time being on wages at collector rate. The workman was engaged in different months for paid works at collector rate of wages. Workman had not completed 240 days continuous service during any of the year. Workman was not continuously working for 5 years. Procedure for appointment/ recruitment is not applicable for petty workman. No notice was required, termination of service of workman in violation of provisions of ID Act is denied. Rather it is submitted that section 25-F,G,H of ID Act is not applicable. 2nd party submits workman is not entitled to any relief.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager, Telecom District Engineer Telegraph in terminating Shri Saabir Khan S/o Shri Mohd., Murteja Khan w.e.f. 1-3-98 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

REASONS

5. Point No.1 The term of reference pertains to legality of termination of services of Saabir Khan. Ist party workman filed affidavit of his evidence. Workman has stated in his affidavit that he was appointed as driver on daily wages on 1-4-93. He was continuously working till 1-3-98. He completed 240 days continuous service during each of the year. On 1-3-98, his services were orally terminated without notice, he was not paid retrenchment compensation he was not given opportunity of hearing. Any chargesheet was not issued to him, no enquiry was conducted against him. After termination of his service, 2nd party engaged other employees on daily wages. His request for re-employment was not considered. In his cross examination, Ist party workman says appointment letter was received by him. Appointment letter is not produced in case. He denies that he was engaged on daily wages and he was paid wages every day. He denied that he was called when work was available. He admits that logbooks are used to be signed by Driver. In log book Exhibit M-1, his signature is not appearing. Workman explained that logbook pertaining to his working are not produced. He denies that he not worked for 240 days during any of the year.

6. Application for production of documents was filed by Ist party on 1-2-75 requesting 2nd party to produce copy of credit sale voucher of the period 1-4-93 to 1-3-98, particulars of JeepNo. MP-8-7439, log book of Vehicle No.MP08-2535, Log book of Vehicle No MKH 1970. It appears the management was proceeded exparte. Exparte order was set aside and Written Statement was filed by management on 6-8-01. However no reply was filed to the application for production of documents. 2nd party has produced log books Exhibit M-1. Log Exhibit M-1 for the period March 93 till 31-8-95 is not bearing signature of the Driver rather it bears only signature of the officer using vehicle. Said log book pertains to Vehicle No. MP08-7439. Register for the period 23rd July 1997 till 31-3-99 bears signatures of Driver Sunil Sharma since 14-10-98, Log book 17/7 for the period 1-1-97 to 31-3-98 bears signatures of Driver Sunil Sharma. Register 17/8 of Vehicle MKH 1970 for the period 22-8-95 to 26-2-96 also donot bear signature of Driver or of officer using vehicle. Register 17/9 for the period 1-3-96 to 31-1-97 bears signature of Driver Sunil Sharma and officer using the vehicle. Said Register is of Vehicle MHK1970.

7. Management has not produced documents credit sale voucher for the period 1-4-93 to 1-3-98 and particulars of Jeep No. 087439.

8. Affidavit of evidence of management's witness Shri G.S.Sengar is filed. Witness of management has stated that workman was engaged by the Telecom Department on temporary basis for a particular work. He was never appointed by the management. Workman was not continuously working on daily wages. Workman had not worked continuously for 240 days during any of the year. His engagement was subject to availability of work. Management's witness in his cross says personally he is not acquainted with workman. He filed affidavit of his evidence as per the contentions in Written Statement. Management's witness admits that Vehicle No.MP08 7439, MP08 2535, MKH 1970 were in the use of the department. He denied that workman was continuously working from 1-4-93 to 1-3-98. Management's witness admits that in Register Exhibit M-1 (17/2 & 17/6), signatures of drivers are not appearing rather he explained that on Register 17/6, Driver Sunil Sharma has signed. On Register 17/8 no signature of Driver is appearing. Register for the period 1-9-95 to 31-3-98 of Vehicle No. MP08-7439 are not produced. He also admits that said jeep was in use of the department. Management's witness admits that workman was not served with notice, retrenchment compensation was not paid to him. 2nd party ohas not produced documents as narrated above and therefore adverse inference deserves to be drawn. If those documents would have been produced, claim of Ist party would have been supported. Management's witness has no personal knowledge. He has filed affidavit supporting contentions in Written Statement and therefore evidence of Ist party workman deserves to be accepted. In my considered view, from evidence discussed above, workman has established that he was continuously working from 1-4-93 to 1-3-98. He completed 240 days continuous service. His services were terminated without notice. Workman was not paid retrenchment compensation. Termination of services of workman is illegal for violation of Section 25-F of ID Act. Therefore I record my finding in Point No.1 in Negative.

9. Point No.2- In view of my finding in Point No.1 termination of services of workman is illegal, question remains for consideration whether Ist party workman is entitled for reinstatement with backwages.

10. Learned counsel for Ist party Shri K.B.Singh relies on ratio held in case between-

Raj Kumar versus Director of Education and others reported in 2016(6)SCC-541. Their Lordship considering notice of retrenchment required to be sent to appropriate Government in prescribed form in terms of Section 25-F(c) not served on Government. There is nothing to indicate that Section 25-F(c) was intended to be directory while the other two sub sections of the same section were mandatory in nature. Section 25 F(c) is a condition subsequent but is still a mandatory condition required to be fulfilled by the employers before the order of retrenchment of the workman is passed. Order was held liable to be set-aside. Their Lordship further considered that no evidence produced to show that retrenchment of appellant was necessary as he had become surplus. The matter in above cited case pertain to the educational department.

The facts of present case are not comparable. Therefore ratio held in the case cannot be applied to case at hand.

11. Ist party workman was engaged on daily wage basis. Appointment letter is not produced by workman. Considering nature of employment and period of working from 1-4-93 to 1-3-98 for about 5 years, compensation Rs. One Lakh would be appropriate and shall meet the ends of justice. Accordingly I record my finding in Point No.2.

12. In the result, award is passed as under:-

- (1) The action of the management of Chief General Manager, Telecom District Engineer Telegraph in terminating Shri Saabir Khan S/o Shri Mohd., Murteja Khan w.e.f. 1-3-98 is not proper and legal.
- (2) 2nd party management is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 6 अप्रैल, 2017

का.आ. 897.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आयुक्त खेल, दिल्ली विकास प्राधिकरण व अन्य, नई दिल्ली एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 130/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.01.2017 को प्राप्त हुआ था।

[सं. एल-42012/138/2015-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 6th April, 2017

S.O. 897.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 130/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Commissioner Sports, Delhi Development Authority and others, New Delhi and their workman, which was received by the Central Government on 23.01.2017.

[No. L-42012/138/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI

ID. No. 130/2015

Sh. Mahesh Kumar S/o Sh. Kanhaiya Lal,
C/o 1800/9, Govindpuri Extension,
Main Road, Kalkaji,
New Delhi-110019.

Versus

1. The Commissioner Sports,
Delhi Development Authority,
Siri Fort Sports Complex, August Kranti Marg,
Khel Gaon,
New Delhi-110049.
2. M/s Niti Enterprises,
M/s Niti Enterprises,
L-88, Kisan Vihar,
New Delhi-110041.

No DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No L-42012/138/2015 -(IR(DU)) dated 21.08.2015 referred the following Industrial Dispute to this Tribunal for the adjudication :-

“Whether the workman, Sh. Mahesh Kumar S/o Sh. Kanhaiya Lal, is entitled to re-instatement in the employment of the employer? If so, with effect from which date; If not to what relief is the workman entitled to?”

On 26.10.2015 reference was received in this Tribunal. Which was register as I.D No. 130/2015 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant Sh. Mahesh Kumar, not filed claim statement inspite of several opportunities.

Opportunity to management was provided to file response against reference. Which has not been filed by management on the ground that claim statement has not been filed by workman.

In these circumstances reference cannot be decided on the basis of pleadings of evidence of parties.

So it is a fit case to pass no dispute Award.

Which is accordingly passed.

Dated:-4.1.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 6 अप्रैल, 2017

का.आ. 898.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आयुक्त खेल, दिल्ली विकास प्राधिकरण व अन्य, नई दिल्ली एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 131/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.01.2017 को प्राप्त हुआ था।

[सं. एल-42012/139/2015-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 6th April, 2017

S.O. 898.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 131/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Commissioner Sports, Delhi Development Authority and others, New Delhi and their workman, which was received by the Central Government on 23.01.2017.

[No. L-42012/139/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI

ID. No. 131/2015

Sh. Rahul Kumar S/o Sh. Ram Padarth Singh,
C/o 1800/9, Govindpuri Extension,
Main Road, Kalkaji,
New Delhi-110019.

Versus

1. The Commissioner Sports,
Delhi Development Authority,
Siri Fort Sports Complex, August Kranti Marg,
Khel Gaon,
New Delhi-110049.
2. M/s Deepali (India) Enterprises,
M/s Deepali (India) Enterprises,
178, Block -14 , Ground Floor,

L.B.S. Hospital Khichripur,
New Delhi-110019

No DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No L-42012/139/2015 -(IR(DU)) dated 21.08.2015 referred the following Industrial Dispute to this Tribunal for the adjudication :-

“Whether the workman, Sh. Rahul Kumar S/o Sh. Ram Padarath Singh, is entitled to re-instatement in the employment of the employer? If so, with effect from which date; If not to what relief is the workman entitled to?

On 26.10.2015 reference was received in this tribunal. Which was register as I.D No. 131/2015 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

After service of notice workman/claimant Sh. Rahul Kumar, not filed claim statement inspite of several opportunities.

Opportunity to management was provided to file response against reference. Which has not been filed by management on the ground that claim statement has not been filed by workman.

In these circumstances reference cannot be decided on the basis of pleadings of evidence of parties.

So it is a fit case to pass no dispute Award.

Which is accordingly passed.

Dated:-4.1.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 6 अप्रैल, 2017

का.आ. 899.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार जिला, बीएसएनएल और अन्य, भावनगर, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 100/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/245/2003-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th April, 2017

S.O. 899.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 100/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, BSNL and other, Bhavnagar, Gujarat and their workman, which was received by the Central Government on 30.03.2017.

[No. L-40012/245/2003-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th March, 2017

Reference: (CGITA) No. 100/2006

1. The General Manager,
Telecom District, BSNL,
Panwadi, Bhavnagar (Gujarat)
2. The Sub-Divisional Officer,
BSNL, Ghogha Road,
Bhavnagar (Gujarat) – 346001

...First Party

V/s

The President,
Shramik Sangh,
Kaveri Corporation, Navapara,
Bhavnagar (Gujarat)

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/245/2003-IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the industrial disputes raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager, Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified? If so, what relief the workmen are entitled to?”

1. The reference dates back to 03.02.2006. The first party submitted the vakalatpatra Ex. 2 of his advocate Shri N.K. Trivedi on 04.10.2007. The second party union The President, Shramik Sangh, Kaveri Corporation, Navapara, Bhavnagar submitted the statement of claim Ex. 5 on 28.08.2008. The first party submitted the vakalatpatra Ex. 10 of his advocate Shri H.R. Raval on 15.03.2011. The second party has been absent since 05.03.2012 but the first party suddenly submitted the preliminary objections Ex. 11 on 25.10.2016 regarding the maintainability of the reference. The second party or his workman have been absent since 05.03.2012. Therefore, the second party failed to submit objections against the application Ex. 11. Thus it appears that the second party is not willing to prosecute the reference.
2. Therefore, the reference is disposed of as not maintainable in the light of the preliminary objections filed by the employer.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अप्रैल, 2017

का.आ. 900.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार जिला, बीएसएनएल और अन्य, भावनगर, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 99/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/142/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th April, 2017

S.O. 900.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 99/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, BSNL and other, Bhavnagar, Gujarat and their workman, which was received by the Central Government on 30.03.2017.

[No. L-40012/142/2002-IR (DU)]

RAJENDAR JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th March, 2017

Reference: (CGITA) No. 99/2006

1. The General Manager,
Telecom District, BSNL,
Panwadi, Bhavnagar (Gujarat)
2. The Sub-Divisional Officer,
BSNL, Ghogha Road,
Bhavnagar (Gujarat) – 346001

...First Party

V/s

The President,
Shramik Sangh,
Kaveri Corporation, Navapara,
Bhavnagar (Gujarat)

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/142/2002-IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the industrial disputes raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager, Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified? If so, what relief the workmen are entitled to?”

1. The reference dates back to 03.02.2006. The first party submitted the vakalatpatra Ex. 2 of his advocate Shri N.K. Trivedi on 04.10.2007. The second party union The President, Shramik Sangh, Kaveri Corporation, Navapara, Bhavnagar submitted the statement of claim Ex. 5 on 28.08.2008. The first party submitted the vakalatpatra Ex. 10 of his advocate Shri H.R. Raval on 15.03.2011. The second party has been absent since 05.03.2012 but the first party suddenly submitted the preliminary objections Ex. 13 on 25.10.2016 regarding the maintainability of the reference. The second party or his workman have been absent since 05.03.2012. Therefore, the second party failed to submit objections against the application Ex. 13. Thus it appears that the second party is not willing to prosecute the reference.
2. Therefore, the reference is disposed of as not maintainable in the light of the preliminary objections filed by the employer.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अप्रैल, 2017

का.आ. 901.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार जिला, बीएसएनएल और अन्य, भावनगर, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 98/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/139/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th April, 2017

S.O. 901.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 98/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, BSNL and others, Bhavnagar, Gujarat and their workman, which was received by the Central Government on 30.03.2017.

[No. L-40012/139/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th March, 2017

Reference: (CGITA) No. 98/2006

1. The General Manager,
Telecom District, BSNL,
Panwadi, Bhavnagar (Gujarat)
2. The Sub-Divisional Officer,
BSNL, Ghogha Road,
Bhavnagar (Gujarat) – 346001

...First Party

V/s

The President,
Shramik Sangh,
Kaveri Corporation, Navapara,
Bhavnagar (Gujarat)

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/139/2002-IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the industrial disputes raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager, Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified? If so, what relief the workmen are entitled to?”

1. The reference dates back to 03.02.2006. The second party union The President, Shramik Sangh, Kaveri Corporation, Navapara, Bhavnagar submitted the statement of claim Ex. 2 on 16.07.2008. The first party submitted the vakalatpatra Ex. 10 of his advocate Shir H.R. Raval on 11.02.2016. The second party has been absent since 05.03.2012 but the first party suddenly submitted the preliminary objections Ex. 11 on 25.10.2016 regarding the maintainability of the reference. The second party or his workman have been absent since 05.03.2012. Therefore, the second party failed to submit objections against the application Ex. 11. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference is disposed of as not maintainable in the light of the preliminary objections filed by the employer.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अप्रैल, 2017

का.आ. 902.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार जिला, बीएसएनएल और अन्य, भावनगर, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 90/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/419/2001-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th April, 2017

S.O. 902.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 90/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, BSNL and other, Bhavnagar, Gujarat and their workman, which was received by the Central Government on 30.03.2017.

[No. L-40012/419/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th March, 2017

Reference: (CGITA) No. 90/2006

1. The General Manager,
Telecom District, BSNL,
Panwadi, Bhavnagar (Gujarat)
2. The Sub-Divisional Officer,
BSNL, Ghogha Road,
Bhavnagar (Gujarat) – 346001

...First Party

V/s

The President,
Shramik Sangh,
Kaveri Corporation, Navapara,
Bhavnagar (Gujarat)

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/419/2001-IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the industrial disputes raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager, Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified? If so, what relief the workmen are entitled to?”

1. The reference dates back to 03.02.2006. The second party union The President, Shramik Sangh, Kaveri Corporation, Navapara, Bhavnagar submitted the statement of claim Ex. 2 on 16.07.2008. The first party submitted the vakalatpatra Ex. 9 of his advocate Shir H.R. Raval on 11.02.2016. The second party has been absent since 05.03.2012 but the first party suddenly submitted the preliminary objections Ex. 10 on 25.10.2016 regarding the maintainability of the reference. The second party or his workman have been absent since 05.03.2012. Therefore, the second party failed to submit objections against the application Ex. 10. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference is disposed of as not maintainable in the light of the preliminary objections filed by the employer.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अप्रैल, 2017

का.आ. 903.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार जिला, बीएसएनएल और अन्य, भावनगर, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 68/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/397/2001-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th April, 2017

S.O. 903.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 68/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, BSNL and others, Bhavnagar, Gujarat and their workman, which was received by the Central Government on 30.03.2017.

[No. L-40012/397/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th March, 2017

Reference: (CGITA) No. 68/2006

1. The General Manager,
Telecom District, BSNL,
Panwadi, Bhavnagar (Gujarat)
2. The Sub-Divisional Officer,
BSNL, Ghogha Road,
Bhavnagar (Gujarat) – 346001

...First Party

V/s

The President,
Shramik Sangh,
Kaveri Corporation, Navapara,
Bhavnagar (Gujarat)

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/397/2001-IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the industrial disputes raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager, Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified? If so, what relief the workmen are entitled to?”

1. The reference dates back to 03.02.2006. The second party union The President, Shramik Sangh, Kaveri Corporation, Navapara, Bhavnagar submitted the statement of claim Ex. 2 on 16.07.2008. The first party submitted the vakalatpatra Ex. 10 of his advocate Shir H.R. Raval on 11.02.2016. The second party has been absent since 05.03.2012 but the first party suddenly submitted the preliminary objections Ex. 11 on 25.10.2016 regarding the maintainability of the reference. The second party or his workman have been absent since 05.03.2012. Therefore, the second party failed to submit objections against the application Ex. 11 Thus it appears that the second party is not willing to prosecute the reference.
2. Therefore, the reference is disposed of as not maintainable in the light of the preliminary objections filed by the employer.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अप्रैल, 2017

का.आ. 904.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार जिला, बीएसएनएल और अन्य, भावनगर, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 55/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/378/2001-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th April, 2017

S.O. 904.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 55/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, BSNL and others, Bhavnagar, Gujarat and their workman, which was received by the Central Government on 30.03.2017.

[No. L-40012/378/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th March, 2017

Reference: (CGITA) No. 55/2006

1. The General Manager,
Telecom District, BSNL,
Panwadi, Bhavnagar (Gujarat)

2. The Sub-Divisional Officer,
BSNL, Ghogha Road,
Bhavnagar (Gujarat) – 346001

...First Party

V/s

The President,
Shramik Sangh,
Kaveri Corporation, Navapara,
Bhavnagar (Gujarat)

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/378/2001-IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the industrial disputes raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager, Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified? If so, what relief the workmen are entitled to?”

1. The reference dates back to 03.02.2006. The second party union The President, Shramik Sangh, Kaveri Corporation, Navapara, Bhavnagar submitted the statement of claim Ex. 2 on 16.07.2008. The first party submitted the vakalatpatra Ex. 7 of his advocate Shir H.R. Raval on 11.02.2016. The second party has been absent since 05.03.2012 but the first party suddenly submitted the preliminary objections Ex. 8 on 25.10.2016 regarding the maintainability of the reference. The second party or his workman have been absent since 05.03.2012. Therefore, the second party failed to submit objections against the application Ex. 8. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference is disposed of as not maintainable in the light of the preliminary objections filed by the employer.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अप्रैल, 2017

का.आ. 905.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार जिला, और अन्य, भावनगर, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 49/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/372/2001-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th April, 2017

S.O. 905.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 49/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, and others, Bhavnagar, Gujarat and their workman, which was received by the Central Government on 30.03.2017.

[No. L-40012/372/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th March, 2017

Reference: (CGITA) No. 49/2006

1. The General Manager,
Telecom District, BSNL,
Panwadi, Bhavnagar (Gujarat)
2. The Sub-Divisional Officer,
BSNL, Ghogha Road,
Bhavnagar (Gujarat) – 346001

...First Party

V/s

The President,
Shramik Sangh,
Kaveri Corporation, Navapara,
Bhavnagar (Gujarat)

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/372/2001-IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the industrial disputes raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager, Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified? If so, what relief the workmen are entitled to?”

1. The reference dates back to 03.02.2006. The second party union The President, Shramik Sangh, Kaveri Corporation, Navapara, Bhavnagar submitted the statement of claim Ex. 2 on 16.07.2008. The first party submitted the vakalatpatra Ex. 8 of his advocate Shir H.R. Raval on 11.02.2016. The second party has been absent since 05.03.2012 but the first party suddenly submitted the preliminary objections Ex. 9 on 25.10.2016 regarding the maintainability of the reference. The second party or his workman have been absent since 05.03.2012. Therefore, the second party failed to submit objections against the application Ex. 9. Thus it appears that the second party is not willing to prosecute the reference.
2. Therefore, the reference is disposed of as not maintainable in the light of the preliminary objections filed by the employer.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अप्रैल, 2017

का.आ. 906.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार जिला, और अन्य, भावनगर, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 41/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/391/2001-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th April, 2017

S.O. 906.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 41/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, and others, Bhavnagar, Gujarat and their workman, which was received by the Central Government on 30.03.2017.

[No. L-40012/391/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th March, 2017

Reference: (CGITA) No. 41/2006

1. The General Manager,
Telecom District, BSNL,
Panwadi, Bhavnagar (Gujarat)
2. The Sub-Divisional Officer,
BSNL, Ghogha Road,
Bhavnagar (Gujarat) – 346001

...First Party

V/s

The President,
Shramik Sangh,
Kaveri Corporation, Navapara,
Bhavnagar (Gujarat)

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/391/2001-IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the industrial disputes raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager, Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified? If so, what relief the workmen are entitled to?”

1. The reference dates back to 03.02.2006. The second party union The President, Shramik Sangh, Kaveri Corporation, Navapara, Bhavnagar submitted the statement of claim Ex. 17 on 24.07.2008. The first party submitted the vakalatpatra Ex. 21 of his advocate Shir H.R. Raval on 11.02.2016. The second party has been absent since 05.03.2012 but the first party suddenly submitted the preliminary objections Ex. 22 on 25.10.2016 regarding the maintainability of the reference. The second party or his workman have been absent since 05.03.2012. Therefore, the second party failed to submit objections against the application Ex. 22. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference is disposed of as not maintainable in the light of the preliminary objections filed by the employer.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अप्रैल, 2017

का.आ. 907.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार जिला, और अन्य, भावनगर, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 109/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/37/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th April, 2017

S.O. 907.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 109/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, and others, Bhavnagar, Gujarat and their workman, which was received by the Central Government on 30.03.2017.

[No. L-40012/37/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th March, 2017

Reference: (CGITA) No. 109/2006

1. The General Manager,
Telecom District, BSNL,
Panwadi, Bhavnagar (Gujarat)
2. The Sub-Divisional Officer,
BSNL, Ghogha Road,
Bhavnagar (Gujarat) – 346001

...First Party

V/s

The President,
Shramik Sangh,
Kaveri Corporation, Navapara,
Bhavnagar (Gujarat)

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/37/2002-IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the industrial disputes raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager, Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified? If so, what relief the workmen are entitled to?”

1. The reference dates back to 03.02.2006. The first party submitted the vakalatpatra Ex. 2 of his advocate Shri N.K. Trivedi on 04.10.2007. The second party union The President, Shramik Sangh, Kaveri Corporation, Navapara, Bhavnagar submitted the statement of claim Ex. 5 on 28.08.2008. The first party submitted the vakalatpatra Ex. 10 of his advocate Shir H.R. Raval on 15.03.2011. The second party has been absent since 05.03.2012 but the first party suddenly submitted the preliminary objections Ex. 14 on 25.10.2016 regarding the maintainability of the reference. The second party or his workman have been absent since 05.03.2012. Therefore, the second party failed to submit objections against the application Ex. 14. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference is disposed of as not maintainable in the light of the preliminary objections filed by the employer.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अप्रैल, 2017

का.आ. 908.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार जिला, और अन्य, भावनगर, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद क पंचाट (संदर्भ संख्या 46/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/369/2001-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th April, 2017

S.O. 908.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 46/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, and others, Bhavnagar, Gujarat and their workman, which was received by the Central Government on 30.03.2017.

[No. L-40012/369/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th March, 2017

Reference: (CGITA) No. 46/2006

1. The General Manager,
Telecom District, BSNL,
Panwadi, Bhavnagar (Gujarat)
2. The Sub-Divisional Officer,
BSNL, Ghogha Road,
Bhavnagar (Gujarat) – 346001

...First Party

V/s

The President,
Shramik Sangh,
Kaveri Corporation, Navapara,
Bhavnagar (Gujarat)

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/369/2001-IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the industrial disputes raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager, Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified? If so, what relief the workmen are entitled to?”

1. The reference dates back to 03.02.2006. The second party union The President, Shramik Sangh, Kaveri Corporation, Navapara, Bhavnagar submitted the statement of claim Ex. 2 on 16.07.2008. The first party submitted the vakalatpatra Ex. 8 of his advocate Shir H.R. Raval on 11.02.2016. The second party has been absent since 05.03.2012 but the first party suddenly submitted the preliminary objections Ex. 9 on 25.10.2016 regarding the maintainability of the reference. The second party or his workman have been absent since 05.03.2012. Therefore, the second party failed to submit objections against the application Ex. 9. Thus it appears that the second party is not willing to prosecute the reference.
2. Therefore, the reference is disposed of as not maintainable in the light of the preliminary objections filed by the employer.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अप्रैल, 2017

का.आ. 909.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार जिला, बीएसएनएल और अन्य, भावनगर, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 43/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/366/2001-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th April, 2017

S.O. 909.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 43/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, BSNL and other, Bhavnagar, Gujarat and their workman, which was received by the Central Government on 30.03.2017.

[No. L-40012/366/2001-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD**

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th March, 2017

Reference: (CGITA) No. 43/2006

1. The General Manager,
Telecom District, BSNL,
Panwadi, Bhavnagar (Gujarat)

2. The Sub-Divisional Officer,
BSNL, Ghogha Road,
Bhavnagar (Gujarat) – 346001

...First Party

V/s

The President,
Shramik Sangh,
Kaveri Corporation, Navapara,
Bhavnagar (Gujarat)

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/366/2001-IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the industrial disputes raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager, Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified? If so, what relief the workmen are entitled to?”

1. The reference dates back to 03.02.2006. The second party union The President, Shramik Sangh, Kaveri Corporation, Navapara, Bhavnagar submitted the statement of claim Ex. 2 on 16.07.2008. The first party submitted the vakalatpatra Ex. 8 of his advocate Shir H.R. Raval on 11.02.2016. The second party has been absent since 05.03.2012 but the first party suddenly submitted the preliminary objections Ex. 9 on 25.10.2016 regarding the maintainability of the reference. The second party or his workman have been absent since 05.03.2012. Therefore, the second party failed to submit objections against the application Ex. 9. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference is disposed of as not maintainable in the light of the preliminary objections filed by the employer.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अप्रैल, 2017

का.आ. 910.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार जिला, बीएसएनएल और अन्य, भावनगर, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 106/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/250/2003-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th April, 2017

S.O. 910.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 106/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, BSNL and other, Bhavnagar, Gujarat and their workman, which was received by the Central Government on 30.03.2017.

[No. L-40012/250/2003-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th March, 2017

Reference: (CGITA) No. 106/2006

1. The General Manager,
Telecom District, BSNL,
Panwadi, Bhavnagar (Gujarat)
2. The Sub-Divisional Officer,
BSNL, Ghogha Road,
Bhavnagar (Gujarat) – 346001

...First Party

V/s

The President,
Shramik Sangh,
Kaveri Corporation, Navapara,
Bhavnagar (Gujarat)

...Second Party

For the First Party : Shri N.K. Trivedi

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/250/2003-IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the industrial disputes raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager, Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified? If so, what relief the workmen are entitled to?”

1. The reference dates back to 03.02.2006. The first party submitted the vakalatpatra Ex. 3 of his advocate Shri N.K. Trivedi on 04.10.2007. The second party union The President, Shramik Sangh, Kaveri Corporation, Navapara, Bhavnagar submitted the statement of claim Ex. 6 on 28.08.2008. The second party has been absent since 05.03.2012 but the first party suddenly submitted the preliminary objections Ex. 14 on 25.10.2016 regarding the maintainability of the reference. The second party or his workman have been absent since 05.03.2012. Therefore, the second party failed to submit objections against the application Ex. 14. Thus it appears that the second party is not willing to prosecute the reference.
2. Therefore, the reference is disposed of as not maintainable in the light of the preliminary objections filed by the employer.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 अप्रैल, 2017

का.आ. 911.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार जिला, बीएसएनएल और अन्य, भावनगर, गुजरात एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 101/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.03.2017 को प्राप्त हुआ था।

[सं. एल-40012/244/2003-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th April, 2017

S.O. 911.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 101/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom District, BSNL and other, Bhavnagar, Gujarat and their workman, which was received by the Central Government on 30.03.2017.

[No. L-40012/244/2003-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 14th March, 2017

Reference: (CGITA) No. 101/2006

1. The General Manager,
Telecom District, BSNL,
Panwadi, Bhavnagar (Gujarat)
2. The Sub-Divisional Officer,
BSNL, Ghogha Road,
Bhavnagar (Gujarat) – 346001

...First Party

V/s

The President,
Shramik Sangh,
Kaveri Corporation, Navapara,
Bhavnagar (Gujarat)

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party :

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/244/2003-IR(DU) dated 03.02.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the industrial disputes raised by the President, Shramik Sangh, Bhavnagar against the management of General Manager, Telecom District, Bhavnagar and others over alleged illegal termination of services of 69 workmen is justified? If so, what relief the workmen are entitled to?”

1. The reference dates back to 03.02.2006. The second party union The President, Shramik Sangh, Kaveri Corporation, Navapara, Bhavnagar submitted the statement of claim Ex. 5 on 28.08.2008. The first party submitted the vakalatpatra Ex. 11 of his advocate Shir H.R. Raval on 15.03.2011. The second party has been absent since 05.03.2012 but the first party suddenly submitted the preliminary objections Ex. 13 on 25.10.2016 regarding the maintainability of the reference. The second party or his workman have been absent since 05.03.2012. Therefore, the second party failed to submit objections against the application Ex. 13. Thus it appears that the second party is not willing to prosecute the reference.

2. Therefore, the reference is disposed of as not maintainable in the light of the preliminary objections filed by the employer.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 7 अप्रैल, 2017

का.आ. 912.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 02/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.04.2017 को प्राप्त हुआ था।

[सं. एल-22012/368/2004-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 7th April, 2017

S.O. 912.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of Singareni Collieries Co. Ltd. and their workmen, received by the Central Government on 07.04.2017.

[No. L-22012/368/2004-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated the 21st day of March, 2017**INDUSTRIAL DISPUTE No. 2/2006****Between :**

The Branch Secretary,
(Sri N. Kistaiah)
Singareni Collieries Workers Union (AITUC)
Mandamarri,
Mandamarri – 504231

...Petitioner Union

AND

The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Division,
Mandamarri – 504231

...Respondent

Appearances :

For the Petitioner : M/s. G. Vidyasagar, K Udaya Sri, P. Sudheer Rao & B. Shivakumar, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma & P. Vijaya Laxmi, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/368/2004/IR(CM-II) dated 6.9.2005 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

“Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Division in calculating the ex-gratia on the basis of last wages drawn as per date of application i.e., November 2001 instead of actual date of retirement i.e., December, 2002 in respect of S/Shri V. Rajeshwara Rao, Shotfirer, SMG-I & others (as per list enclosed) is legal and justified? If not, to what relief the terminated workers are entitled?”

On receipt of the reference this Tribunal has registered and numbered the reference as I.D.No.2/2006 and issued notices to both the workmen/union and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. **The averments made in the claim statement in brief are as follows:**

The Petitioner workmen were the employees under the Respondent. The Respondent i.e., M/s. Singareni Collieries Company Ltd., who had introduced VRS (VRS) (Golden Hand Shake) by circular No. P-49/5294/IR/2264 dated 5.10.2001. As per the claim the employees reference to paragraph 2.2 were offered VRS. As per the scheme the competent authority to accept the VRS applications will be the Director, P & A and W and the employees who are aged about 50 years and below 58 years as on the date of publication were offered VRS. The scheme came into force w.e.f. 1.11.2001. As per the scheme whenever an employee makes an application for VRS on the said scheme the same will be forwarded to the Area General Manager by the Head of the Department/Mine where the employees are working. The Area General Manager in turn would forward the same to the Corporate office and thereafter the corporate office accept the VRS along with ex-gratia amount payable to the employees will be communicated. The employees through the concerned Area Manager after taking due approval from the competent authority, i.e., the Director, P&A and W in terms of paragraph 2.7.0. benefits available under the scheme have been specified. The employee is entitled to the following benefits:-

- a) Provident Fund and pension as per the Coal Mines Provident Fund Rules and Coal Mines Pension Scheme.
- b) Encashment of leave with wages not exceeding 100 days as on the date of cessation of the employment.
- c) Gratuity as per the provisions of NCWA.
- d) Monetary terminal payment (ex-gratia) equivalent to 1 ½ months wages (Basic, VDA+SDA) for each completed year of wages or monthly wages at the time of retirement multiplied by the balance number of months of service left before the normal date of retirement, whichever is less.

It is also stated that pursuant to the retirement scheme the above mentioned 20 workers have made applications in the month of November, 2001 to the management for availing VRS which were accepted w.e.f. 10.12.2002 and the same was communicated vide order dated 3.12.2002. The management did not communicate the benefits available to the employees along with the office order dated 3.12.2002 consequent upon their voluntary retirement and as such letter dated 3.12.2002 is not in conformity with paragraph 5.5 of VRS circular dated 5.10.2001. Subsequently the workmen were issued with the letter dated 11.1.2003 that he will be paid a sum of Rs.4,42,402.56 ps. towards ex-gratia. The said workmen made one representation stating that by the time of their VRS was accepted the workmen were getting a basic pay of Rs.6747/- whereas the ex-gratia was calculated on the basic pay of Rs.6383/-. Thereby he has been deprived of the difference amount and requested the Respondent company to calculate the ex-gratia amount on the last salary payment i.e., Rs.6747/- correctly whereas ex-gratia was paid on the basic pay of Rs.6383/- which is unjust and arbitrary and therefore requested to rectify the anomaly with regard to payment of ex-gratia amount and as such he is entitled to the difference of amount of Rs.21186.24 ps. towards ex-gratia amount. Similarly other employees have also made representations stating that they are entitled to payment of ex-gratia on the basis of last pay drawn as on 10.12.2002. But the management has not paid the difference of the amount. The action on the part of the Respondent management is illegal, arbitrary and contrary to the VRS. It is further submitted that the SCC Workers Union has raised a conciliation vide letter dated 20.8.2003 stating that 20 workmen were not paid the ex-gratia properly. They were entitled to ex-gratia amount on the basis of wages as on the date of retirement, i.e., 10.12.2002, however, they were paid the ex-gratia on the basis of November, 2001 wages which is illegal. The demand of the union was admitted in the conciliation. The management submitted its view. In their views it was categorically accepted that the VRS application of the 20 mining staff were accepted w.e.f. 10.12.2002. It was also accepted by them that ex-gratia amount was calculated as per the wages drawn as on the date of application, i.e., November, 2001. They have also given the details of ex-gratia amount paid to the individual workmen. The management wanted to justify the action in terms of clause 2.7.0 and 5.2 of the circular dated 5.10.2001. The stand of the management is not in conformity with the circular dated 5.10.2001. It is further submitted that in terms of paragraph 2.7.4(a) it is clearly justified that the employee is entitled to ex-gratia amount equivalent to 1½ months wages (Basic, VDA and SDA) for each completed year of service or monthly wages at the time of retirement multiplied by the balance number of months of service left before normal date of retirement whichever is less. Thus the calculation to be arrived at on the basis of monthly wages are to be determined as on the date of retirement, but not as on the date of application. Paragraph 5.2 is only with regard to the procedure after the application is made by an employee. It is for the Head of the Department to fill up the required columns about the service particulars and pay particulars that will not deprive the workmen to claim for retiral benefits, in particular ex-gratia on the basis of salary drawn as on the date of retirement. It is also submitted that the Provident, Pension, payment towards encashment of leave, gratuity specified in paragraph 2.7.3 were paid on the basis of wages drawn at the time of retirement. Thus, there is no rationale in arriving at the ex-gratia

on the basis of monthly wages at the time of application. Therefore, the action on the part of the management is discriminatory and unjust.

3. It is also submitted that on a perusal of the scheme it would clearly show that mere submitting the application under VRS would not be made attributes the application retirement under VRS. The applications are to be accepted by the competent authority, i.e., the Director, PA &W and the same acceptance would be communicated by the concerned C.G.M., who vide letter dated 3.12.2002 communicated the acceptance and also specified that the voluntary retirement has been accepted w.e.f. 10.12.2002. Therefore, it is wholly irrational on the part of the management to contend that the ex-gratia would be calculated on the basis of date of application which has got no relevance. Further vide letter dated 19.6.2002 the management have also called the 20 workmen for interview on 22.6.2002 before the General Manager (Personnel), Kothagudem to persuade them whether they are till agreeable for VRS. On the same day, the management again sought for option of the workmen whether VRS is agreeable to them and after counselling only they were issued with letters dated 3.12.2002 accepting their VRS from service w.e.f. 10.12.2002. Therefore, there is no justifications in taking the date of application for the purpose of arriving at the ex-gratia only. Under the above grounds, the Petitioner union prayed to declare the action of the management in calculating the ex-gratia amount on the basis of last drawn wages as per the date of application i.e., November, 2001 instead of actual date of retirement, i.e., December, 2002 in respect of 20 workmen as illegal, unjust and consequently direct the Respondent management to calculate the ex-gratia on the basis of last drawn wages on the actual date of retirement together with costs.

4. The Respondent filed their counter denying the facts averred in the claim statement of the Petitioner union, with the following averments in brief:

It is stated that the Respondent company having suffering losses due to excess manpower, introduced one voluntary retirement scheme (Golden Hand Shake) on the guidelines issued by the Bureau of Public Enterprises. This scheme was initially applicable to 42 categories of employees who are in piece rated, daily rated and monthly paid employees and who are in the age group of 50-58 years as on the date i.e., 1.11.2001. The scheme was in operation for a period of one month i.e., 1.11.2001 to 30.11.2001. A circular to this effect enunciating the guidelines, has been issued by the Respondent company on 5.10.2001. The above circular is quoted below for ready reference:-

“2.7.0 : Benefits under the Scheme

2.7.4(a) : Monetary Terminal Payment (Ex-gratia)

In addition, an employee whose request for voluntary retirement is accepted would also be entitled to an ex-gratia payment on the following guidelines.

2.7.1.a (i) : Ex-gratia payment equivalent to one and half months wage (Basic, VDA & SDA) for each completed year of service.

OR

(ii) : Monthly wages at the time of retirement multiplied by the balance number of months of service left before normal date of retirement, whichever is less.

2.7.4(d) : Monthly rated employees;

Basic Pay, VDS & SDA per month will be taken for arriving at monthly emoluments. Half of so arrived amount will be treated as emoluments for half month. Thus, the ex-gratia amount equivalent to one and half months emoluments will be arrived at.

Those employees who opt for voluntary retirement under the above scheme are eligible for an ex-gratia amount as stated above, besides the terminal benefits which they are normally entitled to under various enactments/rules in force. It is stated that voluntary retirement is not a condition of service. It is intended to as a special incentive to the workmen who are not inclined to work. It is in the nature of an offer which is voluntarily and freely invited from willing workers if a workman freely accepts, his retirement comes into force. The amount of ex-gratia is not paid for any work done by the employees who opted voluntary retirement but paid in lieu of leaving their service. It is nothing but a package deal. There cannot be any industrial dispute as there are no service conditions involved. As such the present dispute is not maintainable as it is not an industrial dispute under the definition of Sec.2(k) of the Industrial Disputes Act, 1947. Further, it does not fall under the purview of the statutory provisions of Sec.7 and 7A read with matters specified under Schedule II and III of the Industrial Disputes Act, 1947. For this, the Government of India, Ministry of Labour and Employment, referred the dispute to this Tribunal which is bad in Law. There can not be any reference when there is no industrial dispute as defined u/s 2(k) of the Industrial Disputes Act, 1947. It is well settled that this Tribunal do not interfere and adjudicate any matter if it is not an industrial dispute under Sec.2(k) of the Industrial Disputes Act, 1947 and also not come under the purview of Sec.7 and 7A of the Industrial Disputes Act,

1947 read with the matters specified in Schedules II & III. It is further stated that the Respondent Company has introduced VRS (Golden Hand Shake) which was in operation for a period of one month from 1.11.2001 to 30.11.2001. The salient features /guidelines of the scheme have been circulated through Circular dated 5.10.2001. The 20 workers in the reference are monthly paid employees and have opted for voluntary retirement under the scheme. The applications for voluntary retirement were accepted w.e.f. 10.12.2002. Further more, the voluntary retirement acceptance letters were issued initially and ex-gratia amount sanctioned letters were issued subsequently. The ex-gratia entitled to these 20 employees was paid and they have received the same without any objections or protest. It is stated that in respect of Sri V. Rajeswar Rao, he was paid ex-gratia amount of Rs.4,42,402.56 based on his earnings during the month of November, 2001, he being a monthly rated employee. As on the date of his application, he was in C-Grade. Subsequently, in accordance with Memo. of settlement dated 9.8.2002, he was placed in Tech. & Sup.Grade-B and designated as Sr. Shotfirer vide order dated 28.8.2002. After receipt of his representation the ex-gratia amount payable taking his basic wages in the revised scale of pay i.e., Grade-B was recalculated and the same amounting to Rs.21,186/- was paid and the same was received by him. The total ex-gratia amount paid to him was Rs.4,42,402.56 + Rs.21,186.24 i.e., Rs.4,63,588.80. Therefore, the allegation that Sri v. Rajeswar Rao was not paid he difference of amount towards ex-gratia is not true and correct. It is also stated that ex-gratia payable to these employees was correctly calculated and in conformity with clause 2.7.4. & 5.2 of the guidelines circulated through circular dated 5.10.2001 and they have accepted it, except Sri V. Rajeswar Rao. It is further submitted that the 19 employees have accepted this except Sri V. Rajeswar Rao, who was paid the difference of ex-gratia amount. These 19 employees are not entitled to get difference of ex-gratia like Sri V. Rajeswar Rao as their designation was remained unchanged. The contention of the Petitioner union that ex-gratia amount has to be paid to these 20 persons taking into consideration of the wages drawn by them as on the date of retirement, is not tenable in the eye of law. As per clause 2.7.1(a)(i), the employees who opted for VRS are entitled to ex-gratia payment equivalent to 1 ½ months wages for each completed years of service of monthly wages at the time of retirement multiplied by the balance no. of months of service left before the normal date of retirement, whichever is less as per circular dated 5.10.2001. These employees who are entitled to get the payment of ex-gratia have been paid depending on their eligibility. The calculation of ex-gratia payable under the VRS has got no relevance to the payment of other terminal benefits. Payment of other terminal benefits are governed by different enactments and statutes and calculations and payments are made accordingly. It is stated that the applications for voluntary retirement under scheme submitted by these 20 employees were accepted w.e.f. 10.12.2002 vide letter dated 3.12.2002. The contention of the Petitioner that the ex-gratia payable under the voluntary scheme has to be calculated based on the wages earned as on the date of retirement is not tenable. There is no irrationality in payment of ex-gratia as alleged by the Petitioner. As per their entitlement the 20 workers have been given the ex-gratia and they have received the same without any objection or protest. Under the above grounds, the Respondent submitted for dismissal of the petition with costs.

5. The Petitioner union has examined two witnesses out of whom, Sri N. Kistaiah, the Secretary to the Petitioner union is examined as WW1 and Sri Viswanatha Rajeshwar Rao, Rd. Mining Sardar is examined as WW2, and they have proved 42 documents on their behalf which have been marked as Ex.W1 to W42. On the other hand, the Respondent has examined one witness namely, Sri Edara James, the Personal Manager, as MW1 but has not marked any document on their behalf.

6. The Petitioner union has only submitted written notes of arguments which has been taken into consideration. Only oral argument is advanced from the side of the Respondent.

7. In view of the pleadings of the parties the following points are to be considered:-

I. Whether the action of the General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Division in calculating the ex-gratia on the basis of last wages drawn as per date of application i.e., November 2001 instead of actual date of retirement i.e., December, 2002 in respect of S/Shri V. Rajeshwara Rao, Shotfirer, SMG-I & others (as per list enclosed) is legal and justified?

II. To what relief the terminated workers are entitled?"

8. **Point No.I:** The Learned Counsel appearing on behalf of the workmen contended that in order to reduce excess man power the Respondent company introduced one VRS (Golden Hand Shake) scheme with guidelines issued by the bureau of public enterprise. Pursuant to the scheme, the workmen along with others opted for Voluntary retirement Scheme. As per the scheme, the competent authority the Director, P&A and W, will accept the applications and also as per the scheme whenever an employee makes an application for Voluntary retirement Scheme and the said claim will be forwarded to the Area General Manager by the Head of the Department/Mine where the employees are working. The Area Manager would provide the same to the Corporate office and thereafter, the corporate office accept the VRS along with the ex-gratia amount payable to the employees will be communicated. The employees through the concerned Area General Manager after taking due approval from the competent authority will consider the application for Voluntary retirement Scheme and suggest the benefits available to the employees. Pursuant to the retirement scheme the Petitioners made application in the month of November, 2001 with the management for VRS

which were accepted with effect from 10.12.2002 and the same was communicated to them by order dated 3.12.2002. But the management did not communicate the benefits available to the employees consequent upon their VRS. Subsequently, the workmen were issued with the letter dated 11.1.2003, wherein it had been mentioned that they will be paid a sum of Rs.4,42,402.56ps towards ex-gratia. The management calculated the ex-gratia basing on the basic pay of Rs.6383/- only. Thereafter workman Sri V. Rajeshwar Rao made a representation to the Respondent stating that by the time of their VRS, he was getting a basic pay of Rs.6747/-, whereas the ex-gratia was calculated on the basic pay of Rs.6383/- which is unjust and arbitrary. Thereby he was deprived of the due amount and requested the Respondent to calculate the ex-gratia amount on the last drawn pay. Sri V. Rajeshwar Rao requested the management to rectify the anomaly with regard to payment of ex-gratia amount and as such he is entitled to the difference of amount of Rs.21186-24 ps. Similarly other employees have also made representations stating the same issue towards payment of ex-gratia on the basis of the last paid salary drawn as on 10.12.2002. But the management did not pay any heed to it and has not paid the difference of amount, of which the action on the part of the Respondent management is illegal, arbitrary and contrary to the VRS.

9. On the other hand, the Learned Counsel appearing on behalf of the Respondent management contended that in order to reduce the excess manpower, the Respondent introduced one VRS (Golden Hand Shake) basing on the guidelines issued by the Bureau of Public Enterprises. The scheme was initially applicable to 42 categories of employees, who are in piece rated, daily rated and monthly paid employees and who are in the age group of 50-58 years as on the date i.e., 1.11.2001. The scheme was in operation for a period of one month i.e., 1.11.2001 to 30.11.2001. He further contended that those employees who opted for Voluntary retirement under the Scheme are eligible for an ex-gratia amount as stated in the circular issued by the company. Besides, the terminal benefits which they are normally entitled to under various enactments/rules are in force. He further contended that Voluntary retirement is not a condition of service. It is intended to as a special incentive to the workmen who are not inclined to work. It is in the nature of an offer which is voluntarily and freely invited from the willing workers if a workman freely accepts, his retirement comes into force. The amount of ex-gratia is not paid for any work done by the employees who opted voluntary retirement but is paid in lieu of leaving their service. It is nothing but a package deal. He contended that the claim raised by the Petitioners union is not tenable in the eye of Law.

10. During the course of hearing of the case, WW1, Sri N. Kistaiah, being a Branch Secretary of the union stated that pursuant to the Voluntary retirement Scheme 20 workmen who were referred to in the reference have made application for Voluntary retirement Scheme in November, 2001 and their applications were accepted with effect from 10.12.2002 and the same was also communicated to them vide office order dated 3/12/2002. He further stated that the Respondent did not communicate the benefits available to them consequent upon the Voluntary Retirement. Thus, the letter dated 3.12.2002 is not in conformity with Para No.5.5 of the VRS circular dated 5.10.2001. Subsequently, the workmen were issued with letter dated 11.1.2003 about the amount to be paid towards ex-gratia under the scheme. Further it is stated that in respect of Sri V. Rajeshwar Rao, EC 2212085, he was issued with letter dated 11.1.2003 that he should be paid a sum of Rs.4,42,402-56 ps towards ex-gratia. The said workman made representation to the Respondent stating that by the time of his VRS was accepted, i.e., 10.12.2002, he was getting basic pay of Rs.6747/- whereas ex-gratia was calculated on the basis of pay of Rs.6383/-, thereby he was deprived of the difference of amount and requested the Respondent to calculate the ex-gratia amount on his last drawn salary correctly, as it is unjust and arbitrary. WW2 Sri V. Rajeshwar Rao, fully supported the evidence of WW1. He has proved Ex.W1 and W2, to show that the workman is entitled to ex-gratia on the basis of last drawn wages basing on the actual date of retirement together with costs and other benefits. But nothing has been elicited by the Respondent to disbelieve the veracity of both WW1 and WW2. On the other hand, Sri Edara James, being the Personal Manager of the Respondent management has been examined as MW1 and stated that ex-gratia has been calculated on the basis of the date of application. He also stated that the claim of the workmen is not justified. During the course of cross-examination, MW1 admitted that one of the workmen, ex-gratia calculated was made on the basic pay of Rs.6383/- and further admitted that with regard to demand of gratuity unless, he verifies the record he can not say whether gratuity was paid considering the basic pay of Rs.6747/-, the workmen involved in the present dispute are entitled for difference of wages of Rs.21,186-24 ps. and also admitted that the workmen have made several representations to the Respondent company through the union and also individually and the same was not considered by the Respondent management. This witness MW1 also admitted that Exs.W1 to W41 are the correspondence with the company and also stated that the workmen were retired from service in the month of November, 2001 since then, they are approaching the Respondent from time to time for payment of ex-gratia and other benefits due to them and also stated that the workmen involved in the present dispute are senior citizens and have crossed 70 years of age. He further admitted that the revised wage structure has been introduced with effect from 1.7.2001, revised under National Coal Wages Agreement Wage Agreement-7. The evidence of MW1 also finds support from the evidence of WW1 and WW2 as regards the claim made by them. The evidence of MW1 clearly indicates that the workmen are entitled to ex-gratia and other benefits for the service rendered by them.

11. In this case Singareni Collieries Workers Union (AITUC) had raised a conciliation vide letter dated 20.8.2003 alleging that 20 workmen were not paid the ex-gratia properly and they are entitled to ex-gratia on the basis of wages as on the date of retirement, i.e., 10.12.2002. But they were paid the ex-gratia on the basis of the date of application, i.e., November, 2001 wages which is illegal. The demand of the union was admitted in the conciliation and the management submitted its views wherein the management categorically accepted that the voluntary retirement of the 20 workmen was accepted with effect from 10.12.2002. It was also accepted by the management that ex-gratia amount was calculated as per the wages drawn on the date of application i.e., November, 2001. The management submitted the details of ex-gratia amount paid to the individual workmen. The management tried to justify their action in terms of clause 2.7.0 and 5.2 of the circular dated 5.10.2001. But the conciliation ended in failure.

12. During the course of argument the Learned Counsel appearing on behalf of the Petitioner vehemently contended that the action of the management in calculating the ex-gratia of the workman on the date of application i.e., November, 2001 is not justified, in terms of clause 2.7.4 and, 5.2 of the circular dated 5.10.2001, is not in conformity with the circular dated 5.10.2001. The Learned Counsel contended that in terms of clause 2.7.4(a), it is clearly justified that the employee is entitled to ex-gratia amount equivalent to one and half months wages (basic, VDA & SDA) for each completed year of service or monthly wages at the time of retirement multiplied by the balance number of months of service left before normal date of retirement, whichever is less. Thus, the calculation to be arrived at on the basis of monthly wages at the time of retirement which also indicates that the wages are to be determined as on the date of retirement but not as on the date of application. Clause 5.2 is only on the record to the procedure after the application is made by an employee. As per the above clause it is for the Head of the Department to arrange to fill up the required columns about the service particulars and pay particulars, that will not deprive the workman to claim for retiral benefits, in particular, ex-gratia on the basis of salary drawn as on the date of retirement. He further contended that PF, Pension, payment towards encashment of leave, gratuity specified in para No.2.7.3., on the basis of wages were drawn at the time of retirement. But it is not known how ex-gratia was calculated on the basis of monthly wages drawn at the time of application, this action of the management is discriminatory and unjust.

13. In fact, the Respondent management has accepted the Voluntary retirement of the workmen vide order dated 10.12.2002 and the same was communicated to the workmen vide letter dated 3.12.2002. It is not known why ex-gratia was only calculated on the date of application and all other benefits are calculated on the basis of wages drawn at the time of retirement, even though the application for Voluntary retirement so filed automatically accepted following due procedure. On perusal of the scheme it clearly indicates that mere submission of application under Voluntary retirement Scheme would not treat the applicant retire under Voluntary retirement Scheme. The applications are to be accepted by the competent authority, i.e., Director (PA & W), and the same acceptance would be communicated by the concerned CGM vide letter dated 3.12.2002, communicated the acceptance and also specified that the retirement has been accepted with effect from 10.12.2002. In such a circumstances, there is no justification to calculate the ex-gratia on the basis of the date of application. The Learned Counsel for the Petitioner also contended that vide letter dated 19.6.2002, the management has called the 20 workmen for interview on 20.6.2002 before the General Manager (Personal), Kothagudem, enquiring whether they are still agreeable for Voluntary retirement or not and after counseling only they were issued with letters dated 3.12.2002, accepting their Voluntary retirement with effect from 10.12.2002. When the management had taken such type of action before acceptance of voluntary retirement, there is no justification in taking the date of application for the purpose of arriving at the calculation of ex-gratia. In fact, basing on the application submitted by the workman for Voluntary retirement the management has not accepted it. The management has also persuaded the workman and made counseling whether they are agreeable to obtain Voluntary retirement or not. In such a situation, the date of calculation of ex-gratia basing on the date of filing the application is not justified. The Respondent has nowhere proved that the ex-gratia is only applicable to the workmen till the date of filing of the application and ex-gratia will be calculated to the workman only till the month of November, 2001. When the workmen have already reached the higher scale at the time of acceptance of Voluntary Retirement Scheme and their basic pay was higher than the pay for which the ex-gratia has been calculated, they should be given the benefit of ex-gratia on the higher scale not in the lower basic pay which the management has not done. Therefore, on considering all the materials available on record, it is seen that there is no justification on the part of the management to calculate the ex-gratia on the basis of the pay received in the month of November, 2001. The calculation of ex-gratia should be on the last pay of the retirement of the workman on which date pension along with other terminal benefits have been calculated. In the instant case, when the workmen have opted to take voluntary retirement they should be given all the benefits from the date of their retirement, not on the date of filing of their application. Further more, if the management would have considered their application of Voluntary retirement on the very date of filing of the application i.e., only in the month of November, 2001, the matter would have been otherwise. But when it was calculated after one year of the date of filing of the application, why the workmen would suffer. They should be given the benefit which would be available to them. Therefore, in the opinion of this Tribunal, the ex-gratia calculated by the Respondent management from the date of filing of the application for Voluntary retirement Scheme by the Petitioner workmen is not justified.

This Point No. I is answered accordingly.

14. **Point No. II :** In view of the findings given in Point No. I above, the action of the General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Division in calculating the ex-gratia on the basis of last wages drawn as per date of application i.e., November 2001 instead of actual date of retirement i.e., December, 2002 in respect of S/Shri V. Rajeshwara Rao, Shotfirer, SMG-I & others (as per list enclosed) is illegal and unjust. Therefore, the workmen are entitled to get the ex-gratia from the date of last drawn wages on the actual date of retirement only.

Thus, Point No.II is answered accordingly.

RESULT

In the result, the reference is answered as follows:

“The action of the General Manager, M/s. Singareni Collieries Company Ltd., Mandamarri Division in calculating the ex-gratia on the basis of last wages drawn as per date of application i.e., November 2001 instead of actual date of retirement i.e., December, 2002 in respect of S/Shri V. Rajeshwara Rao, Shotfirer, SMG-I & others (as per list enclosed) is not legal and justified. The Respondent is directed to calculate the ex-gratia payable to the Petitioner workmen from the date of last drawn wages, i.e., on the actual date of retirement only.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 21st day of March, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

WW1: Sri N. Kistaiah

WW2: Sri V. Rajeshwar Rao

Witnesses examined for the Respondent

MW1: Sri E. James

Documents marked for the Petitioner

- Ex.W1 : Photostat Copy of circular No. P.49/5294/IR/2264 dt. 5.10.2001
- Ex.W2 : Photostat Copy of circular dt. 5.10.2001
- Ex.W3 : Photostat Copy of officer order (V Rajeswara Rao) dt. 3.12.2002
- Ex.W4 : Photostat Copy of officer order (V Rajeswara Rao) dt. 11.1.2002
- Ex.W5 : Photostat Copy of officer order (K. Rajamogili) dt. 3.12.2002
- Ex.W6 : Photostat Copy of officer order (K. Rajamogili) dt. 30.12.2002
- Ex.W7 : Photostat Copy of officer order (G. Rajalingu) dt. 3.12.2002
- Ex.W8 : Photostat Copy of officer order (G. Rajalingu) dt. 30.12.2002
- Ex.W9 : Photostat Copy of officer order (G. Satyanarayana) dt. 3.12.2002
- Ex.W10 : Photostat Copy of officer order (G. Satyanarayana) dt. 30.12.2002
- Ex.W11 : Photostat Copy of officer order (RM. Singhade) dt. 3.12.2002
- Ex.W12 : Photostat Copy of officer order (K. Narsaiah) dt. 3.12.2002
- Ex.W13 : Photostat Copy of officer order (K. Narsaiah) dt. 11.1.2003
- Ex.W14 : Photostat Copy of officer order (E. Narsaiah) dt. 3.12.2002
- Ex.W15 : Photostat Copy of officer order (E. Narsaiah) dt. 11.1.2003
- Ex.W16 : Photostat Copy of officer order (B. Rayalingu) dt. 11.1.2003
- Ex.W17 : Photostat Copy of officer order (B. Raja Kistaiah) dt. 3.12.2002
- Ex.W18 : Photostat Copy of officer order (B. Raja Kistaiah) dt. 11.1.2003
- Ex.W19 : Photostat Copy of officer order (J. Posham) dt. 3.12.2002
- Ex.W20 : Photostat Copy of officer order (J. Posham) dt. 11.1.2003

- Ex.W21 : Photostat Copy of officer order (J. Venkat Rao) dt. 3.12.2002
- Ex.W22 : Photostat Copy of officer order (J. Venkat Rao) dt. 30.12.2002
- Ex.W23 : Photostat Copy of officer order (Mohd. Ramzan Ali) dt. 3.12.2002
- Ex.W24 : Photostat Copy of officer order (Mohd. Ramzan Ali) dt. 30.12.2002
- Ex.W25 : Photostat Copy of officer order (B. Rama Swamy) dt. 3.12.2002
- Ex.W26 : Photostat Copy of officer order (B. Rama Swamy) dt. 30.12.2002
- Ex.W27 : Photostat Copy of officer order (O. Narender) dt. 3.12.2002
- Ex.W28 : Photostat Copy of officer order (Mustak Hussain) dt. 3.12.2002
- Ex.W29 : Photostat Copy of officer order (Mustak Hussain) dt. 30.12.2002
- Ex.W30 : Photostat Copy of officer order (R. Sailu) dt. 3.12.2002
- Ex.W31 : Photostat Copy of officer order (R. Sailu) dt. 30.12.2002
- Ex.W32 : Photostat Copy of officer order (M. Rajaiah) dt. 3.12.2002
- Ex.W33 : Photostat Copy of officer order (M. Rajaiah) dt. 28.12.2002
- Ex.W34 : Photostat Copy of representation dt. 13.2.2003
- Ex.W35 : Photostat Copy of office order 12.1.2002
- Ex.W36 : Photostat Copy of representation to the ACL(C) dt. 20.8.2003
- Ex.W37 : Photostat Copy of representation to the management dt. 4.8.2003
- Ex.W38 : Photostat Copy of settlement dt. 20.8.2003
- Ex.W39 : Photostat Copy of views of Petitioner union before the conciliation officer
- Ex.W40 : Photostat Copy of minutes of the meeting dt. 15.9.2004
- Ex.W41 : Photostat Copy of failure report dt. 27.9.2004
- Ex.W42 : Photostat Copy of representation of the Petitioner union to the Government of India, Ministry of Labour

Documents marked for the Respondent

NIL

नई दिल्ली, 7 अप्रैल, 2017

का.आ. 913.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 59/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.04.2017 को प्राप्त हुआ था।

[सं. एल-22013/1/2017-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 7th April, 2017

S.O. 913.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of Singareni Collieries Co. Ltd. and their workmen, received by the Central Government on 07.04.2017.

[No. L-22013/1/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT
HYDERABAD****Present : Sri Muralidhar Pradhan, Presiding Officer**Dated the 16th day of March, 2017**INDUSTRIAL DISPUTE L.C. No. 59/2006****Between :**

Sri Alla Sammi Reddy,
S/o Malla Reddy,
C/o M/s. A.K. Jayaprakash Rao,
Advocates, D.No.3-4-206/2,
Lingampally, Kachiguda,
Hyderabad – 500 027

...Petitioner

AND

1. The General Manager,
M/s. Singareni Collieries Company Ltd.,
Mandamarri Area, Kalyankhani Post,
Adilabad District.
2. The Superintendent of Mines,
M/s. Singareni Collieries Company Ltd.,
RK-1A Incline, Mandamarri Area,
Kalyankhani post, Adilabad District

...Respondents

Appearances:

- For the Petitioner : M/s. A.K. Jayaprakash Rao, K. Srinivas Rao, P. Sudha, T. Bal Reddy, M. Govind., K. Ajay Kumar & Venkatesh Dixit, Advocates
- For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

Sri A. Sammi Reddy, an ex.employee has filed this petition under Sec.2A(2) of the I.D. Act, 1947 challenging the action of the management in terminating his services w.e.f. 31.10.2005 and to declare the action of the management as illegal, unjust, arbitrary and against the principles of natural justice.

2. The averments made by the Petitioner in his claim petition are as follows:

The Petitioner submits that he entered into the services of the Respondents' management on 25.10.1970 as a voluntary casual worker. At the time of entering into service his age was 19 years but the management recorded his age as 25 years. In the year 1988, the management displayed a circular on the notice board for changing/ making correction in the date of birth of the workers in the service book as per the educational qualification of the workers and to that effect notice was displayed. The management asked the workers to produce certificates who dispute their date of birth. Consequent to that circular the applicant made an application/representation for correction of his date of birth attaching copy of school certificate before the concerned official. But the management did not correct the date of birth of the Petitioner. The management company has prescribed the age of retirement rules which came into effect from 3.8.1959 which state that, "Every person on entering the company service shall declare his date of birth which shall not differ from any declaration expressed or implied for any public office before entering company's service." It is further stipulated that, "The date of birth as recorded in the school or college certificate will be adopted without any modification, where documentary evidence of age or date of birth is not produced at the time of first appointment the candidate shall be required to produce satisfactory evidence of his date of birth to the Chief Surgeon and Medical Officer at the time of medical examination, who shall assess the age and record his own opinion on the medical certificate of health."

3. Petitioner has submitted that as per retirement rules the age should have been assessed on proof of school certificate but, in the case of the Petitioner that rule was not followed nor the Petitioner was examined by medical officer at the time of entering into service. The Petitioner made several representations to correct the date of birth as 25.6.1951 but the management has erroneously entered his age as 25 years on the date of entry into service. The Petitioner was advised by the management to attend before the age determination committee along with his documents.

Accordingly, the Petitioner attended the committee and produced the xerox copy of the document. There was a provision that where there is variation in age determined by the Medical Board and one claimed by the employee, the case will be referred to the age determination committee. The Petitioner was sent to the medical board and he appeared before the Apex Medical Board on 29.12.2003 and the Apex Medical Board assessed the age of the Petitioner to be 58 years as on 20.10.2003. The correct age of the Petitioner was 53 years as on 20.10.2003 but the same was not corrected and the Petitioner has been retired on 31.10.2005 and as such, the action of the company is illegal, arbitrary, unjust and violative of the principles of natural justice.

4. The management has filed counter statement denying the facts averred in the claim statement and have stated therein that the Petitioner has prayed this Tribunal without approaching the conciliation officer and initiating any conciliation proceeding and as such, the petition under Sec.2A(2) is not maintainable. The Petitioner's age was entered as 25 years on the date of the entry into service. He disputed his age, hence, his case was referred to the Apex Medical Board who assessed his age in the year 2003 and he was found to be 58 years as on 20.10.2003. The Petitioner filed a petition before the Hon'ble High Court challenging his date of birth which was not considered. At the time of entry in the service the Petitioner did not produce any school certificate. The alleged birth certificate was not produced by the Petitioner before the management. The Apex Medical Board is the competent authority to assess the age of the Petitioner and this Tribunal has no mechanism to reassess the age of the Petitioner. The petition is devoid of merit and not maintainable under Sec.2A(2) and deserves to be dismissed.

5. In this case the management had conducted one domestic enquiry. Even though the Petitioner workman has challenged the validity of the domestic enquiry, ultimately as the matter was not agitated by the Petitioner, the domestic enquiry was held legal and valid vide order dated 1.7.2011.

6. None of the parties have preferred to adduce any oral evidence. But both the parties have relied on some documentary evidence. At the consent of both the parties, 8 documents have been admitted on behalf of the Petitioner as Ex.W1 to W8 and 11 documents have been admitted on behalf of the Respondent as Ex.M1 to M11 in view of the joint memo filed by the parties dated 26.8.2013.

7. In view of the rival contention of both the sides, this Tribunal has to consider the following points:

(I) Whether the action of the management in retiring the Petitioner on 31.10.2005 is illegal, arbitrary and unjust as claimed by the Petitioner or not.

(II) To what relief the Petitioner is entitled?

8. Point No. (I): The Petitioner has asserted that he joined as voluntary casual worker in the Respondent organization on 25.10.1970 and at the time of his entry into service his age was 19 years but the management recorded his age as 25 years. In the year 1988, pursuant to the circular issued by the Respondents for making correction in the date of birth of the workers in the service book as per the educational qualification of the workers, the Petitioner workman applied to the management for correction of his date of birth attaching a copy of the school certificate. But the management did not correct the date of birth of the Petitioner. Ultimately, the management has prescribed, the age of retirement rules which came into effect from 3.8.1959 wherein it has been mentioned that, "every person on entering the service of the company shall declare his date of birth which shall not differ from any declaration expressed or implied for any public office before entering company's service." It is further stipulated that the date of birth as recorded in the school or college certificate will be adopted without any modification, where documentary evidence of age or date of birth is produced and at the time of first appointment the candidate shall be required to produce satisfactory evidence of his date of birth to the Chief Surgeon and Medical Officer at the time of medical examination, who shall assess the age and record his own opinion on the medical certificate of health". In view of the above circular, the Petitioner submitted his school certificate, but his case was not considered. even if he had not been examined by the Medical officer at the time of his entry into service. The Petitioner made several representations to correct his date of birth as 25.6.1951. But the management has erroneously entered his age as 25 years at the time of his entry into service. The Petitioner was advised by the Respondents' management to attend before the age determination committee along with his documents. Accordingly, the Petitioner attended before the committee, submitted the xerox copy of the documents, but his case was referred to the Apex Medical Board, wherein the age of the Petitioner was considered as 58 year as on 20.10.2003, but the correct age of the Petitioner was 53 years by that time. The action of the management recording such age is arbitrary and violative of the principles of natural justice.

9. On the other hand, the Respondents submitted that the Petitioner has not filed any documents in support of proof of his age at the time of his entry into service but only basing on the declaration of his age, it has been entered in his service book. When he disputed his age he was referred to the Apex Medical Board who assessed his age in the year 2003 and he was found to be 58 years as on 20.10.2003. The Petitioner filed a writ petition before the Hon'ble High Court challenging correction of his date of birth which was not considered. At the time of his entry into service, the Petitioner did not produce any school certificate which he has produced later. The Apex Medical Board is the

competent authority to assess the age of the Petitioner, and as such the Tribunal has no mechanism to re-assess the age of the Petitioner. Hence, the claim of the Petitioner is not tenable in the eye of law and deserves to be rejected.

10. I have already heard learned counsel for both the sides. In fact, at the time of entry into service, the Petitioner has not filed his school certificate. It is not known what prevented the Petitioner to produce the school certificate-Ex.W8 at the time of his joining into service. The date of birth of the Petitioner has been mentioned as 25.6.1951 in Ex.W8. The Petitioner neither produced his school admission register where this entry was made at the time of his admission in the school, nor examined the person who made the entry in the admission register, except Ex.W8. The Petitioner has not produced any other document to show his correct date of birth. The Petitioner has not objected the entry of his date of birth in his service book at the time of his joining into service. Only after 1988 he disputed the entry made in his service book. When no cogent documentary evidence was produced before the management the management referred the Petitioner to the medical board and the Apex Medical Board determined the age of the Petitioner as 58 years as on 20.10.2003 and the Board opined the age of the Petitioner as 58 years as on the date of medical examination. The Petitioner though challenged the date of birth after his retirement from service, he has not challenged the findings of the Medical Board before any other Forum. Except Ex.W8 the form of Transfer Certificate, no other document has been produced by the Petitioner to prove his date of birth. No doubt, the entry as regards the date of birth made in the Board of Secondary School certificate is considered to be valid, but, in the case of the Petitioner perhaps he has not passed the Board of Secondary Education. Even at the time of entry into service, if the Petitioner could have produced the present transfer certificate, the matter would have been otherwise. But the Petitioner has not done it. At this stage without any clinching evidence as regards proof of age it can not be stated that the entry made in the transfer certificate vide Ex.W8 would supersede the report submitted by the Apex Medical Board. Therefore, the management has rightly assessed the age of the Petitioner as 58 years as on 20.10.2003 and allowed the Petitioner to retire from service at the age of 60 years after attaining superannuation. In the circumstances stated above, the action of the management in retiring the Petitioner workman Sri Alla Sammi Reddy, on 31.10.2005 is not illegal.

Thus, Point No.I is answered negatively against the Petitioner workman.

11. **Point No.II:** In Point No.I, it has already been decided that the action of the management in retiring the Petitioner on 31.10.2005 is not illegal. Since the Petitioner has retired at the age of 60 years as on 31.10.2005, has already got his retirement benefits after superannuation, he is not entitled to get any relief.

Thus, Point No.II is answered accordingly.

ORDER

In the result, the claim petition is dismissed.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant, transcribed by her and corrected by me on this the 16th day of March, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

- Ex.W1 : Photostat copy of Ir. No. IED/156/89 dt. 29.1.1989
- Ex.W2 : Photostat copy of circular No.p.34/4184/IR/1767 dt.23.9.1989
- Ex.W3 : Photostat copy of Ir. No.MMR/KK.5A/WO/03/1828 dt.11.7.2003
- Ex.W4 : Photostat copy of Ir.No.MMR/PER/S/171/4682 dt.13.10.2003
- Ex.W5 : Photostat copy of office memo dt. 29.12.2003
- Ex.W6 : Photostat copy of Ir. No.MMR/RK1A/WO16/05/3351 dt.1.10.2005
- Ex.W7 : Photostat copy of order passed in WP No.22923/2005
- Ex.W8 : Photostat copy of transfer certificate of the workman

Documents marked for the Respondent

- Ex.M1 : Photostat copy of identity and service card of workman dt.13.4.2001
 Ex.M2 : Photostat copy of Form-A, CMPF declaration by employee dt.29.8.88
 Ex.M3 : Photostat copy of identification card issued by Respondent
 Ex.M4 : Photostat copy of form of transfer certificate
 Ex.M5 : Age assessment report dt. 20.10.2003
 Ex.M6 : Proceedings of Apex Med. Board dt. 20.10.2003
 Ex.M7 : Photostat copy of proceedings of Area Age determination Committee dt.15.7.2003
 Ex.M8 : Photostat copy of identification
 Ex.M9 : Photostat copy of Circular on procedure for determination of age dt.23.8.1989
 Ex.M10 : Photostat copy of notice of termination dt.1.10.2005
 Ex.M11 : Photostat copy of order passed in WP No.22923/2005

नई दिल्ली, 7 अप्रैल, 2017

का.आ. 914.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 53/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.04.2017 को प्राप्त हुआ था।

[सं. एल-22012/189/2007-आईआर (सोएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 7th April, 2017

S.O. 914.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the Industrial Dispute between the management of M/s. Singareni Collieries Co. Ltd. and their workmen, received by the Central Government on 07.04.2017.

[No. L-22012/189/2007-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD**

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 20th day of March, 2017

INDUSTRIAL DISPUTE No. 53/2007

Between :

The General Secretary (Sri Riyaz Ahmed),
 Singareni Miners & Engg. Workers Union (HMS),
 Qtr. No.C-34, Sector-I,
 Godavarikhani,
 Karimnagar – 505209

...Petitioner

AND

The Chief General Manager,
 M/s. Singareni Collieries Company Ltd.,
 Ramagundram-II Divn., GDK-8 Inc., Colony,
 Godavrikhani, Karimnagar – 505211

...Respondent

Appearances:

For the Petitioner : M/s. A. Sarojana & K. Vasudeva Reddy, Advocates
 For the Respondent : M/s. P.A.V.V.S. Sarma & Vijaya Laxmi Panguluri, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-22012/189/2007-IR(CM-II) dated 24.9.2007 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 requiring this forum to decide the question:

SCHEDULE

“Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of reversion to substantive post as E.P. Operator, Exc.Cat. A fixing his pay allowing 5 increments in Exc.Cat.A w.e.f. 1.11.2004 vide Office Order No. RG3/PER/R/008/1295 dated 15.10.2004 in respect of Sri K. William is legal and justified? If not, to what relief is the workman entitled?”

On receipt of the reference this Tribunal has registered and numbered the reference as I.D. No. 53/2007 and issued notices to both the workman and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

2. The averments made in the claim statement in brief are as follows:

The case of the Petitioner workman is that workman Sri K. William (herein after referred as ‘the workman’) joined in the Respondent’s organization as EP operator in OCP-III, RG, and was discharging his duty with utmost dedication and sincerity. While the workman was working as such on 26.11.2002 he was issued with a charge sheet alleging that due to his negligent attitude, dumper No.C-367 ran-over the boulders, thereby causing damages to the dumper. On receipt of the charge sheet on 2.12.2002, the workman submitted his reply, not only denying the charges but also categorically stated the circumstances leading to the incident. But unfortunately, without considering the explanation submitted by the workman in proper perspective an enquiry was conducted, wherein the workman was not given any opportunity much less valid in nature. The Enquiry Officer and the Presenting Officer and all the management witnesses were with a prejudicial mind that the workman was guilty of the charges. After conclusion of the enquiry, the Enquiry Officer submitted his report holding the charges as proved. Thereafter vide proceedings dated 2/9.8.2004, the workman was asked to submit his reply to the report of the Enquiry Officer and accordingly, the workman submitted his explanation to the show cause notice dated 19.8.2004. But unfortunately, without considering the reply submitted by the workman properly, the General Manager RG-II Area vide office order dated 15.10.2004 passed order imposing penalty of reversion to the workman to a lower grade i.e., Exc.Cat.A and the workman was allowed only five increments in the initial basic of Exc.Cat.A. Aggrieved by the above order the workman filed an appeal before the Appellate Authority / Director (PA &W) on 12.8.2005. Unfortunately, the Appellate Authority rejected the workman’s appeal vide his proceedings dated 4.11.2005. Having left with no other alternative, the workman approached the Petitioner union seeking interference. It is also stated that as the workman is a member of the Petitioner union, the Petitioner union espoused the cause of the workman to the conciliation officer by raising conciliation. But the conciliation ended in failure, resulting the present reference. It is further stated that on 7.11.2002 in the 3rd shift, the workman was allotted C-367 dumper to transport OB from Indiravathi Shavel. After making 12 trips, at about 5.30 AM, having taken the load the workman was proceeding towards dump yard, which was situated at a distance of 200 yards from Indiravathi Shavel. In the mean while another dumper was coming in the opposite direction with forceful focus of lights and as such with a view to avoid any accident due to focus of lights, the workman taken the dumper slightly to the left side. It is also stated that as water was sprayed on the road, the dumper slightly skid and its left tyre got upon to a boulder, the tyre got burst and became uncontrollable and as such it ran overburden causing damages. There is no negligence on the part of the workman at any point of time. It is stated that during the course of enquiry though the workman has explained the above factual aspects in his reply to show cause notice and also in his appeal, but neither the Enquiry Officer nor the Disciplinary Authority or even the Appellate Authority considered the submission made by the workman in proper perspective. It is further submitted that on a bare perusal of the office order dated 15.10.2004 and proceeding dated 4.11.2005 issued by the Appellate Authority it clearly indicate that neither the Disciplinary Authority nor the Appellate Authority have considered any of the submissions made by the workman. The office order dated 15.10.2004 and the order passed by the Appellate Authority in the proceeding dated 4.11.2005 does not spell out any reasons much less valid in nature, as to why the submissions of the workman have not been found appealing. As such, the office order dated 15.10.2004 and Appellate Authority’s order dated 4.11.2005 are liable to be set aside on this ground alone. It is also submitted that though the Presenting Officer examined three witnesses from the side of the management, but none of them are eye witnesses to the incident. Only relying upon the statements of MW1 to MW3 the Enquiry Officer can not hold the charges as proved and as such, the findings of the Enquiry Officer are liable to be treated as perverse and basing on such perverse findings of the Enquiry Officer office order dated 15.10.2004 and Appellate Authority’s order dated 4.11.2005 ought

not to have been issued. It is also stated that the workman has been working as operator for more than two decades and in his entire career there was not even a single accident. The damage caused to the dumper was only on account of the slippery nature of road, but not the negligence on the part of the workman. The workman has not taken the dumper to the left side, two dumpers would have been collided resulting in more damage and apart from human loss. It is further stated that the contention of the management witnesses that only on account of the negligence on the part of the workman, the damage caused to the dumper is only presumption and is not supported by any valid evidence on record and also factually incorrect. As none of the witnesses are eye witnesses to the incident, such contention on the part of the management witnesses ought not to even be accepted by the Enquiry Officer, Disciplinary and the Appellate Authorities. It is submitted that the damage arrived at by the Respondent is not correct. The Respondent is put to strict proof of his claim. It is further submitted that without considering any of the submissions of the workman, the Respondent has imposed punishment and due to such punishment the workman is facing huge financial difficulties as his salary came down drastically. The order passed by the Enquiry Officer as well as the Appellate Authority are liable to be set aside. With the above averments, the Petitioner union submitted to modify the penalty from reversion to Exc.Cat.A with only five increments to that of any other lesser penalty and to save the workman from hardship.

3. The Respondent management filed counter statement denying the facts averred in the claim statement with the following averments:-

It is submitted that the employee Sri K. William hereinafter called as the 'workman' was imposed with a punishment of reversion to a lower grade from Spl.Grade 'A' to Excavation Category 'A' by allowing 05 increments in the initial basic pay of Ex.Cat.'A' with effect from 1.11.2004 vide office order No.RG3/PER/R/008/1295 dated 15.10.2004 for causing damages to a Dumper to the tune of Rs.10 Lakhs approximately on proved charges after conducting a detailed domestic enquiry duly following the principles of natural justice. Aggrieved by this, the General Secretary, SM & EU on behalf of the workman has raised one conciliation proceeding contending the action of the management. But the conciliation proceeding ended in failure and the matter was referred for adjudication. It is stated that the workman participated in the enquiry and submitted his explanation, stating that, "it is the only accident happened in his very long service of 19 years and he requested to the mercy of the management and to save his service as well as his life. He has stated that he has three daughters and one son who are all in colleges and receiving education and a great responsibility lies over him for settling their lives." It is further stated that the Respondent management took due notice of the entire case and took a decision not to impose any harsh penalty. Though the charges levelled against the workman were proved and are grave and serious in nature, the management has taken a lenient view imposing the penalty of reversion to a lower grade i.e., Excavation Category-A and also allowing 5 increments in the initial basic of Excavation Category-A with effect from 1.11.2004. The workman being aggrieved by the penalty imposed on him, has filed a writ petition bearing No.1487 of 2005 before the Hon'ble High Court of A.P., Hyderabad challenging the action taken by the management. The Hon'ble High Court of A.P., vide order dated 3.3.2005 directed the Petitioner/workman to file an appeal before the Appellate Authority which shall have to consider sympathetically. Accordingly, the workman filed an appeal on 12.5.2005 before the Appellate Authority to set aside the order of penalty imposed on him. The Appellate Authority after considering all the materials on record passed a detailed order confirming the penalty imposed by the Disciplinary Authority. Thereafter on behalf of the employee, the Petitioner union has raised conciliation proceeding which was ended in failure resulting the present reference. It is further submitted that due to the mal negligent operation of the dumber by the workman such damage caused to the dumber. Had the workman taken precaution or care such accident to the dumper could have been averted, which was proved during the course of enquiry. It is also stated that every dumper before allowing for operation, will be repaired/checked in all respects mechanically/technically without leaving any defects and damages. Accordingly, dumper no. C-367 was also inspected/checked before allotting to the workman. The workman has neither complained of any defects in the Dumper either at the time of commencement of the shift or during the course of the work. In the enquiry it was proved that the dumber allotted to the workman was damaged to the tune of Rs.10 lakhs approximately, on account of mal operation of the dumper by the workman only due to hitting of the boulders and the cost of the damages occurred to the spares of the dumper was estimated after due inspection by the appropriate authority keeping in view of the repairs/replacement of the parts cost etc.. The accident took place due to hit of boulders on account of the workman's negligent and mal operation only. The charges levelled against the workman have been proved beyond doubt and the punishment imposed on him is proportionate to the offence committed by him. It is further submitted that the charges proved against the workman are grave and serious in nature which warrants a severe punishment] of removal from service apart from recovery of amount of the damages. Keeping the facts into consideration and with a view to enable the workman to be more careful in future, and to give an opportunity to improve, a lenient view has been taken by imposing the penalty of reversion to a lower grade from Spl.Grade 'A' to Excavation Category 'A' allowing 05 increments in the initial basic pay of Ex.Cat.'A' w.e.f. 1.11.2004 vide office order No.RG3/PER/R/008/1295 dated 15.10.2004, though the company suffered a loss of nearly Rs.10 lakhs. The order passed by the Respondent management dated 15.10.2004 and 4.11.2005 are correct and totally justified and it needs no interference. With these averments the Respondent submitted for dismissal of the claim of the Petitioner union.

4. The domestic enquiry conducted in the present case is held as legal and valid vide order dated 21.4.2010.
5. Arguments heard under Sec.11(A) of the Industrial Disputes Act, 1947 from both the parties.
6. In view of the rival contentions raised by both the parties, this Tribunal has to consider the following points:
 - I. Whether the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of reversion to substantive post as E.P. Operator, Exc.Cat. A fixing his pay allowing 5 increments in Exc.Cat.A w.e.f. 1.11.2004 vide Office Order No. RG3/PER/R/008/1295 dated 15.10.2004 in respect of Sri K. William is legal and justified?
 - II. If not, to what relief is the workman entitled?

7. Point No.(I): The Learned Counsel for the Petitioner workman contended that the workman Sri K. William joined in the Respondent organization as EP operator in OCP-III, RG, and was discharging his duty with utmost dedication and sincerity. On 7.11.2002 in the 3rd shift, the workman was allotted C-367 dumper to transport OB from Indiravathi Shavel. After making 12 trips, at about 5.30 AM, having taken the load the workman was proceeding towards dump yard, which was situated at a distance of 200 yards from Indiravathi Shavel. In the mean while another dumper was coming in the opposite direction with forceful focus of lights and as such with a view to avoid any accident due to focus of lights, the workman taken the dumper slightly to the left side. As water was sprayed on the road, the dumper slightly skid and its left tyre got upon to a boulder, the tyre got burst and became uncontrollable and as such it ran overburden causing damages. In order to avoid head on collusion with the dumper coming in opposite direction, the workman left with no other option except to take his dumper to the left side. Had the workman not taken the dumper to the left side, there could have been heavy damage to both the dumpers in addition to human loss. While the matter stood thus, on 26.11.2002 the workman was issued with a charge sheet alleging that due to his negligent attitude, dumper No.C-367 ran-over the boulders, thereby causing damages to the dumper. On receipt of the charge sheet on 2.12.2002, the workman submitted his reply, not only denying the charges but also categorically stated the circumstances leading to the incident. But unfortunately, without considering the explanation submitted by the workman in its proper perspective an enquiry was conducted, wherein the workman was not given any opportunity much less valid in nature. The Enquiry Officer, the Presenting Officer and all the management witnesses were with a prejudicial mind that the workman was guilty of the charges. After conclusion of the enquiry, the Enquiry Officer submitted his report holding the charges as proved. Thereafter the workman was asked to submit his reply to the report of the Enquiry Officer and accordingly, the workman submitted his explanation to the show cause notice. Unfortunately, without considering the reply submitted by the workman properly, the General Manager RG-II Area passed order imposing penalty of reversion to the workman to a lower grade i.e., Exc.Cat.A with five increments in the initial basic of Exc.Cat.A. Aggrieved by the above order the workman filed an appeal before the Appellate Authority / Director (PA &W) on 12.8.2005. Unfortunately, the Appellate Authority rejected the workman's appeal. The workman raised this issue before his union who also taken up the matter by raising the matter before the Conciliation Officer. But the conciliation ended in failure. It is further contended that basing on the hear say evidence of the witnesses the workman was held guilty of the charges. There was no eye witness to the incident. The Enquiry Officer held that due to the negligent act of the workman the accident took place and the workman was held guilty. In this context the Learned Counsel for the Petitioner relied on the evidence of Sri P. Narayana who in his evidence before the Enquiry Officer has stated that, "When the dumper was going to dump yard with load, he heard big sound on Indravathi road way, while he was supervising the works at Padmavathi Shovell. The place of incident to his supervision is near. As soon as he heard the sound, he went to the spot of the incident and found that, the dumper front left tyre was burst and dumper leaned towards dump heaps and the bucket was in hoist position (dumper). "During his enquiry he came to a conclusion that, K. William, EP Operator, had operated the dumper in negligent manner and caused damage to the dumper." The Learned Counsel for the Petitioner workman contended that the above deposition of the complainant clearly indicates that he was not an eye witness to the incident as he was not present at the site of the incident. Admittedly, he came to the accident spot after the incident was over, and stated that due to the negligent act of the workman the accident occurred. Basing on the evidence and statement of the complainant Sri P. Narayana, a post occurrence witness the Enquiry Officer held the workman as guilty. Similarly, relying upon the evidence of MW1, he contended that MW1 came to the spot basing on the wireless message received from Sri P. Narayana, who in his deposition stated that, "at about 5:30 am, he received wireless message from Sri P. Narayana, HOM, that, one dumper C-367 got tyre burst at Indravathi Road". "Further, he deposed that, "He conducted enquiry at the spot and in his enquiry it was revealed that C-367 operator K. William while proceeding to dump yard for Indravathi Shovel, he observed one dumper coming in front of him. Thus, he has taken extra care and moved to left side of the haul road resulted ran over of front left side tyre over one sharp edged boulder which resulted front left tyre burst then resulted uncontrolled movement of dumper and dragged the dumper due to its inertia, over the overburden heaps caused further heavy damage to its front left side tyre assemblies." The Learned Counsel for the Petitioner further contended that the above evidence of MW1 establishes that the workman moved the above dumper C-367 to the left side only to avoid collusion with the dumper coming in the opposite direction. Had the workman not moved the

dumper to the left side, there could have been head on collusion and the damage would have been much more to both the dumpers, in addition to human loss. As per his contention, the evidence of MW1 finds support from the evidence of the workman. In fact, MW1 during the course of the enquiry deposed that, during the time of inspection he observed damages to the dumper as “front left tyre and its assemblies”, whereas, MWs 2 & 3 listed other damages, which were no way connected with the incident occurred on 7.11.2002. There was no clinching evidence before the Enquiry Officer to establish the negligent act of the workman. It has been established that in order to take extra care and to avoid head on collusion between both the dumpers the workman had moved the dumper to the left side. This shows that the workman had taken maximum precaution to avoid the accident and was vigilant by the time of the accident, but the accident was caused without human loss. He further contended that admittedly in his 19 years of service, the workman has not caused any accident and for the first time such an accident was taken place. The Enquiry Officer did not consider the evidence of the workman and MW1 in its proper perspective. The Enquiry Officer proceeded with a presumption as if the workman has admitted his guilty. He contended that without any fault of the workman, the unfortunate incident took place causing damage to the dumper. The workman had not intentionally caused the accident. The penalty imposed upon the workman is too much and it needs modification.

8. On the other hand the Learned Counsel for the Respondent contended that due to the negligent act of the workman the accident took place causing loss of Rs.10 lakhs approximately to dumper C-367. IN the enquiry it was proved that the workman has caused the accident. The management has taken a lenient view imposing the penalty of reversion to a lower grade i.e., from Spl.Grade ‘A’ to Excavation Category ‘A’ allowing 05 increments in the initial basic pay of Ex.Cat. ‘A’ with effect from 1.11.2004. The workman being aggrieved by the penalty imposed on him filed one WP bearing No.1487 of 2005 before the Hon’ble High Court of A.P., challenging the action taken by the management. The Hon’ble High Court vide order dated 3.3.2005 directed the workman to file an appeal before the Appellate Authority which shall have to consider the matter. Accordingly, the workman filed an appeal before the Appellate Authority on 12.8.2005 to set aside the order of penalty imposed on him. But the Appellate Authority after considering all the materials on record passed a detailed order confirming the penalty imposed by the Disciplinary Authority. He also contended that the matter was taken by the Petitioner union before the conciliation officer, but the conciliation proceeding was ended in failure resulting the present case. He also contended that due to the mal and negligent operation of the dumper by the workman such a damage caused to the dumper, but had the workman taken any precaution it would have kept such an accident away which has been proved during the course of enquiry. As per his contention in this case the domestic enquiry conducted by the management was held legal and valid, and the enquiry had been conducted fairly. The workman had not raised any complaint during the course of enquiry. The charges levelled against the workman have been proved beyond doubt and the punishment imposed on him is proportionate to the offence committed by him. He further contended that the charges proved against the workman are grave and serious in nature which warrants a severe punishment of removal from service, apart from recovery of amount of damages. But the punishment imposed by the Disciplinary Authority is correct and justified and it needs no interference.

9. On consideration of the rival contentions of both the sides it is seen that the workman was an experienced employee. On the date of accident after dropping 12 trips, at about 5.30 AM having taken the load, while the workman was proceeding towards the dump yard which was at a distance of about 200 yards from Indiravathi Shovell, he noticed another dumper coming in the opposite direction, with forceful focus of lights and as such with a view to avoid any accident due to focus of lights, the workman taken the dumper slightly to the left side. By that time as water was sprayed on the road, the dumper slightly skid and its left tyre got upon to a boulder, the tyre got burst and became uncontrollable. Even if the workman had taken maximum precaution to avoid the accident he was not succeeded. This clearly shows that the workman was not negligent during the time of operation of the dumper and as such the rash and negligent act of the workman is not proved. Admittedly, prior to that, the workman has not committed any accident and for the first time during his career such an accident took place. The workman being the dumper operator of C-367 has tried his level best to avoid the accident but as it was beyond his control he was unable to avoid the accident. In fact, there were no eye witnesses to the accident. The rash and negligent act of the workman has not been established either by way of any oral evidence or documentary evidence. When the negligent act of the workman is not established it can not be stated that the workman has intentionally caused the accident. The precaution taken by the workman during the course of the alleged accident has clearly proved that the workman is not negligent in his duties. But the accident is caused while the driver was operating the dumper. Admittedly, at the instance of the workman, the accident has been caused. But the punishment imposed upon him by reverting him to a lower grade shows that the management has taken drastic action against the workman. The past conduct of the workman indicates that he has never committed any accident during his service tenure. While imposing said punishment the past conduct of the workman should have been taken into consideration. When there is no eye witness to the alleged accident only basing on presumption the Enquiry Officer has held the workman guilty of the charges holding him solely responsible for the accident, and imposed the punishment of reversion. But the punishment imposed upon him is too harsh. In the circumstances stated above, this Tribunal is of the considered view that, reverting the Petitioner from the post of EP

operator, to Exc.Cat.A is not justified and it needs modification. The workman is to be imposed with a lenient punishment like, stoppage of three increments in the present post of EP operator without reversion.

Thus point No.I is answered accordingly.

10. Point No.II: In Point No.I, it has already been held that the action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of reversion to substantive post as E.P. Operator, Exc.Cat. A fixing his pay allowing 5 increments in Exc.Cat.A w.e.f. 1.11.2004 vide Office Order No. RG3/PER/R/008/1295 dated 15.10.2004 in respect of Sri K. William is not legal and justified. In view of the findings given in Point No.I, the punishment imposed earlier needs modification, to that of stoppage of three increments in the present post of EP operator without reversion.

Result:

In the result, the reference is answered as under:

The action of the management of M/s. Singareni Collieries Company Ltd., in imposing the punishment of reversion to substantive post as E.P. Operator, Exc.Cat.A fixing his pay allowing 5 increments in Exc.Cat.A w.e.f. 1.11.2004 vide Office Order No. RG3/PER/R/008/1295 dated 15.10.2004 in respect of Sri K. William is not legal and justified and the punishment needs modification, to that of stoppage of three increments in the present post of EP operator without reversion and he be paid the difference amount if any arises due to this modification.

Award passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 20th day of March, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 7 अप्रैल, 2017

का.आ. 915.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इन्टरलिंक पेट्रोलियम लिमिटेड के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 120/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-30012/20/2013-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 7th April, 2017

S.O. 915.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 120/2013) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Interlink Petroleum Ltd. and their workman, which was received by the Central Government on 03.04.2017.

[No. L-30012/20/2013-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad,
Dated 22nd February, 2017

Reference: (CGITA) No. 120/2013

The General Manager (Operation),
M/s Interlink Petroleum Ltd.,
GCS Bavla,
Opp. Nageshwar Temple, Taluka Bavla,
Dholka Road, village Salajada,
Ahmedabad (Gujarat) – 382220

...First Party

V/s

Shri Gautam Danabhai Solanki,
C/o Jyoti Labour Union,
Chhotala's Chali,
Near Bus Stop, Odhav Road,
Ahmedabad(Gujarat)

...Second Party

For the First Party : None

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/20/2013-IR(M) dated 01.07.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

“Whether the action of the management of General Manager (Operation) Interlink Petroleum Ltd., Ahmedabad in terminating the service of Shri Gautambhai Danabhai Solanki, Ex. Technician Operator w.e.f. 17.12.2012 without following any legal procedure is justified? If not, what relief the workman is entitled to?”

1. The reference dates back to 01.07.2013. The second party submitted the statement of claim Ex. 2 on 29.07.2013. The first party submitted the written statement Ex. 5 on 29.07.2013 in the form of re-facts and annexed with documents. Since then the second party has been absent and has also not been leading evidence despite giving last opportunity on 03.10.2016 and 02.12.2016. Today on 22.02.2017, the second party is again absent for leading evidence. Thus it appears that the second party workman has no willingness to prosecute the case.

2. Therefore, the reference is disposed of in the absence of the evidence of the second party with the observation as under: “the action of the management of General Manager (Operation) Interlink Petroleum Ltd., Ahmedabad in terminating the service of Shri Gautambhai Danabhai Solanki, Ex. Technician Operator w.e.f. 17.12.2012 without following any legal procedure is justified.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 7 अप्रैल, 2017

का.आ. 916.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बोकरो इस्पात संयंत्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 34/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29012/12/2012-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 7th April, 2017

S.O. 916.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2012) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bokaro Steel Plant and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29012/12/2012-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**In the matter of reference U/S 10 (1)(d) (2A) of I.D. Act, 1947**Reference No. 34/2012**

Employers in relation to the management of M/S Bokaro Steel Plant, Bokaro

And

Their workman

Present : Shri R.K. Saran, Presiding Officer**Appearance:-**

For the Employers : Shri D. Mukherjee, Advocate

For the workman : Shri P.R. Rakshit, Advocate

Industry :- Steel

Dated :- 15/02/ 2017

AWARD

By order No. L- 29012/12/2012 /IR (M) dated 29/ 03/2012, the Central Government in the Ministry of Labour has in exercise of the power conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

“Whether the action of the management of Bokaro Steel Plant, SAIL in reducing the pay of Shri K.P.Mahto, Store Keeper, Staff No. 369331 to the lowest stage in his present scale by way of major punishment i.e reducing to Rs. 6400/- per month in his present Scale (S-10 Grade) w.e.f. 16/01/2002 is legal and justified? What relief the workman is entitled to?”

2. The case is received from Ministry of Labour on 03.05.2012. After receipt of the reference, both parties are noticed. The workman files their written statement on 01.08.2012. But the management files their written statement on 13.01.2013. Thereafter rejoinder and document filed by the parties. One witness each side examined on their behalf. Documents of the management marked as M-1 to M-14 and documents of workman marked as W-1 to W-4.

3. The case of the workman is that the concerned workman was appointed by the management on 23.03.1977 and since then he has been continuously rendering service to the company as store Keeper in T.A Department of Bokaro Steel Plant, B.S.City. The job of store keeper is not only heavy and onerous but it occupies a person in such position engaged all though out everyday. It is added that Sri K.P.Mahto apart from his regular duties was given the job of sale of tickets of J.N.B Park and to deposit the sale proceeds. The workman had very politely expressed his inability to do this additional job but the concerned officials of the department did not took in his request . Of course , the company with some motive had not taken out any office order even in this regard and it was all verbal. As workman of the company Sri K.P.Mahto had to issue such tickets and used to deposit the sale proceeds under the strict supervision of the concerned official which was in day –to-day basis.

4. It is also submitted that unfortunately at the relevant point of time the workman concerned was put under suspension leveling allegations to the effect that the cash amount deposited by the workman towards sale of admission tickets in J.N.B Park pertaining to the period from 14.07.1999 to 27.03.2001 was at variance with the amount collected by him at the ticket counter.

5. It was also alleged that there was an embezzlement of company’s money totaling an amount of Rs. 1,29,856/-

and for this the workman concerned was abruptly put under suspension without even making any preliminary enquiry and asked to submit explanation vide office order of the management No. TA/D/BP/2801/493 dated 14.07.2001

6. It is further submitted by the workman that the management was pressurized to submit his reply to the said charges by their letter dated 21.07.2001 although the workman made a claim to make him available all the tickets and the sale proceeds on which the charges were based so that he could get an opportunity to vouch the veracity of the allegations. But this was not done by the management, and there was denial of the principle of natural justice.

7. It also submits that he is a permanent whole time store keeper and according to the job specification it was not his duties to issue such tickets and to collect cash and to deposit sale proceeds apart from his normal duties as store keeper.

8. It is also unfortunate that being prompted and having obtained such undertaking and recovering the amount, the management staged a show of enquiry against him in respect of the allegations set forth in the charge sheet-cum-suspension. The authority constituting inquiry committee and the official who held enquiry being not proper as the management did not produce all the relevant documents in support of the charges hence the domestic enquiry held by the management is illegal, improper and unjustified, the workman was not given chance to cross examine the management's witness for less he was allowed to examine his witness.

9. The workman was verbally ordered to sell the ticket relating to J.N.B Park over and above the job of store keeper and for obeying the official of the department, he was not only been put to loss to the extent of the amount so unjustly recovered hence management has not been put to any loss as he has been so alleged, but a major punishment has been given to him bringing his pay to the lowest minimum scale in the existing scale (S-10) i.e Rs. 6400 P.M whereas the existing scale was 6400-200-11,400/- w.e.f 16.01.2002 when as per record the concerned workman was drawing the basic pay of Rs. 9,400/- at that point of time. This action can not be allowed to perpetuate, and accordingly thereafter but the proper basic pay has not been paid to him for which he is entitled much less he has been given consequential promotion as also related benefits etc. as accrued to him.

10. It is further submitted by the workman that is a surprise that the poor workman Sri K.P.Mahto has done the same regular job of store keeper over and above the same additional job of sale of tickets for J.N.B Park since the beginning including the disputed period and it was being done by the workman till the date of retirement i.e 31.08.2011 which falsifies the allegations of mistrust upon the workman, and the punishment is too harsh and hence the order of punishment is fit to be revoked from the date of issuance of order and he is entitled to all benefits including promotional benefits and financial benefits with arrears for which the workman is entitled to although he was given S-11 grade on 2005.

11. On the other hand the case of the management is that internal audit department of Bokaro Steel Plant submitted its report and pointed out there are certain tickets which though were sold the sale proceed against these tickets were not submitted in cash section amounting to Rs. 1,29,856/- .

12. The then Sr. Dy. Director & Incharge J.N.B Park sought written explanation from Sri K.P.Mahto regarding irregularities observed by Internal Audit Department. Sri K.P.Mahto accepted having committed the irregularities observed by the Audit in his reply dated 25.07.2001. Thereafter fact finding committee was constituted to go into the detail of irregularities observed by the internal Audit department and sri K.P.Mahto also admitted before the fact finding committee having defalcated Rs. 1,29,856/- due to financial problem in his family. The fact finding committee after making an enquiry submitted its report mentioning therein that "It is prima-facie established that an amount of Rs. 1,29,856/- was embezzled by Sri K.P.Mahto during the period 14.07.1999 to 27.03.2001.

13. After receiving the aforesaid charge sheet the workman concerned submitted his reply and stated therein that , I am ready to deposit the money amounting to Rs. 1,29,856/- which was not deposited by me due to poor financial position of my family member, thereafter the enquiry committee submitted its report holding therein that the workman concerned is guilty of the charges, the concerned workman submitted his explanation to the second show cause notice, and this was not found satisfactory and the order of punishment passed by the disciplinary authority is legal, justified and proportionate to the proved misconduct.

14. The reference is whether the workman's salary to be reduced to his basic pay, for defalcation . The case of the parties is there is a public zoo managed by the management and the workman sits in the counter for giving tickets and receive fees.

15. It is seen certain amount was not accounted for, and the workman deposited the balance, which was accepted by the management and thereafter a departmental proceeding was started, the workman found guilty and it is ordered to reduce his scale to basic pay which is under challenge.

16. The domestic enquiry held as fair and proper by this Tribunal, which is not challenged in any forum, hence it is final.

17. It is the argument of the management that the defalcation should be dealt with strongly. On the other hand the workman says, if that is so as to why the management kept the same workman in the said post till retirement and finally reduced his scale to the minimum i.e his basic pay.

18. After hearing the parties, it is felt that the Tribunal has limited scope, after fair & proper domestic enquiry, it can only interfere in the quantum of punishment, but after perusing the enquiry report which is marked as Ext-M-3, it is felt proper to quote the findings of enquiry committee is below:-

xxx

02. Shri Y.K.Sinha, Dy. Manager (Admn.) JNB Park was negligent to the extent , he did not verify the previous cash receipts before forwarding sales proceeds and proper maintaining was not done.

03. Dr. M.A.Salam, has not exercise his control in the capacity of the incharge, JNB Park over such a sensitive issue nor devised a proper system for the same.

04. The existing system of exchange of tickets and sales proceeds between the storekeeper and the market Assistant at the ticket counter is defective and inadequate.

xxx

19. From the above finding, it appears that the Deputy Manager (Admn.) Y.K.Sinha did not see the previous cash receipts if that is show how it will be known only the window clerk defalcated the amount. Moreover another officer Dr. M.A. Salam has not exercised his control. The system was defective which has been observed by the enquiry committee.

20. This being so why a poor workman, who is at the bottom will be punished. System is to be framed by the authority and the subordinates are to act upon that. For the system failure, the persons sitting at the bottom should not be punished.

21. Considering the facts and circumstance of the case, I hold that the action of the management of Bokaro Steel Plant, SAIL in reducing the pay of Shri K.P.Mahto, Store Keeper, Staff No. 369331 to the lowest stage in his present scale by way of major punishment i.e reducing to Rs. 6400/- per month in his present Scale (S-10 Grade) w.e.f. 16/01/2002 is not fair and justified. Hence the management is directed to gave him his all dues as he was regular employee and his grade be maintained, the workman has been retired in the meantime, he be given his all retirement benefits soon after publication of the award in the gazette of India.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 7 अप्रैल, 2017

का.आ. 917.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स बोकारो पावर सप्लाई कं. लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 41/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29011/12/2012-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 7th April, 2017

S.O. 917.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 41/2012) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bokaro Power Supply Co. Ltd. and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29011/12/2012-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1)(d) (2A) of I.D.Act, 1947

Reference No. 41/2012

Employers in relation to the management of Bokaro Power Supply Co. Ltd.

And

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearance:-

For the Employers : Shri D. Mukherjee, Advocate

For the workman : Shri K.K. Mishra, Advocate

Industry :- Steel

Dated : 22/02/ 2017

AWARD

By order no . L- 29011 /12/2012 /IR (M) dated 29 / 06/2012, the Central Government in the Ministry of Labour has in exercise of the power conferred by clause (d) of sub – section (1) and sub – section (2A) of section 10 of the Industrial Disputes Act , 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

“Whether the action of the management of Bokaro Power Supply Co, (P) Ltd. , Bokaro in not allowing the payment of Additional Welfare Amenities @ Rs. 1000/- per month to the Contract workers engaged through contractors w.e.f 1/10/2009 at par with the contract workers working in the premises of Bokaro Steel Plant –SAIL is legal and justified? What relief the workmen are entitled to?”

2. The case is received from Ministry of Labour on 25.07.2012. The workman files written statement on 28.09.2012 but the management files their written statement on 07.03.2013. two witnesses adduced on behalf of the workman but ten witnesses examined on behalf of the management. Documents of the management marked as M-1 & M-2 series but documents of workman marked as W-1 to W-15.

3. The case of the Sponsoring Union/workman is that the management of SAIL announced an Additional Welfare Amenity to the Contract workers through their contractors in the form of attendance allowance to the tune of maximum Rs. 1000/- per month i.e 38.46 per day and it was advised to the management to convey the contractors to make payment the amount of Rs. 38.46 per day. The amount paid by the contractors to their contract workers shall be reimbursed through their bills upon certification by the CLC clearing certificate for running final bills. Thereafter the management of Bokaro power Supply Co,(P) Ltd decided the proposal for payment of Additional Welfare Amenities (A.W.A) allowance to the workers deployed by the contractors in BPSCL as implemented in Bokaro Steel Plant – SAIL to pay an amount of Rs. 38.46 per day of actual attendance maximum limit to 1000/- PM to the workers deployed by the contractors in job as AWA as per circular No. pers/works/co-ordn-10-3235 dated 16.08.2010 of BSL/SAIL and directed to implement the same w.e.f. 1.10.2011 and accordingly it has been implemented.

4. It is further submitted by the Union/workman that the management of SAIL written to the Durgapur Steel Plant vide letter dated 27.0.3.2011 that “ you are requested to make payment to your contract labourers on Account of AWA for the period from Oct. 2009 to August 2010 which is reimbursed as per provision of Additional welfare and safety Allowance.

5. It is also submitted by the union/workmen is that the management of BPSCL has agreed for the payment of Rs. 1000/- from Oct. 2011 whereas SAIL/ BSL is paying the benefits of AWA since October 2009. The all subsidiaries of SAIL are paying this benefits from Oct. 2009.

6. It is further submitted by the union that when the principle of this scheme had been agreed by the Board of Directors of SAIL and implemented by BSL and all other subsidiaries of SAIL from Oct. 2009 then why the BPSCL management is not implementing the said scheme from 2009. The sponsoring Union represented to the management for payment of 1000/- as AWA be paid to contractor workers of BPSCL since Oct. 2009 but the management has taken stubborn attitude and not paying the AWA from Oct. 2009 instead of 2011 hence Industrial dispute arose.

7. On the other hand the case of the management is that the present reference is vague and indefinite as it does not disclose the names of the alleged contractor who are demanding additional welfare amenities’ ,it cannot be adjudicate in absence of name of alleged beneficiaries.

8. It is also submitted by the management that M/S BPSCL is a joint venture of DVC and SAIL. The SAIL and BPSCL are two separate companies. There is no equalities in the matter of engagement and other factors between the contractor workmen of SAIL / Bokaro Steel Plant and BPSCL as they are different in nature.

9. It is further submitted by the management that as per facts and law, the contractor workmen of BPSCL can not demand the same wages and facilities at par with SAIL contractor workmen. The management of BPSCL ensure the payment of minimum wages to the contract workmen. The management is not legally bound to pay Rs. 38.46 per day as per the actual attendance to the alleged contract workmen, still then the management being a model employer symmetrically considered the demand of the workman placed before the Board and decision was taken whereby the management agreed to pay Rs. 38.46 per day on actual attendance w.e.f. 01.10.2011. Hence the demand of the workman for payment of 38.46 per day on actual attendance w.e.f. 01.10.2009 is neither legal nor justified.

10. The claim of the workman to get AWA from Oct. 2009. Admittedly the workman are contract workers of the management. They are working in a Power Generation Company which is supplying power to BSL. All the BSL/SAIL contract workers are getting AWA from their employer w.e.f Oct. 2009, though the principal employer is the BSL. Presently the workman concerned are getting AWA from 2011. It is submitted by the management that instruction given to them from 2011. But the question is when the BSL contract workers get the AWA from Oct. 2009, why there will be discrimination specially when both companies management is one and the present company is only working for BSL. In absence of BPSCL company, BSL may remain stand still.

11. It is admitted by the management in his written statement that BPSCL is a joint venture of DVC and SAIL, there are 50:50 equity share ratio of both the company. In the agreement it is mentioned that BPSCL came into existence on 18.09.2001 under companies Act 1956 as a part of SAIL. Therefore it is to say that BSL is the father of BPSCL.

12. As per Ext W-5, AWA is paid to his contract workers from Oct. 2009 by BSL through contractor. Contract Labour pass marked as Ext. W-8 series in which work area is mentioned as BPSCL but it is issued on the head of SAIL/Bokaro Steel Plant.

13. Shri R.R.Sinha, AGM (P&A) submits his statement before the R.L.C © Dhanbad is quoted below:-

Xxxx

“It may please be noted that BPSCL is producing steam and power exclusively for the Bokaro Steel Plant. Also Bokaro Steel plant makes available CO & BF Gas generated by it in the course of its plant operation which is consumed for operation of our plant by us directly. In the event of any kind of loss of generation of steam and power at BPSCL, will directly affect the production of Bokaro steel Plant and may lead to explosion in gas lines and affect the safety and security of persons in and around Bokaro Steel City.”

Xxxx

13. The BPSCL Board meeting minutes, marked as Ext W-1, In which the proposal for payment of AWA to the workers of BPSCL, is quoted below:-

“The Board noted the recommendation of the Board Committee for personnel on the proposal for payment of AWA allowance to the workers deployed by Contractors in BPSCL as implemented in SAIL, Bokaro Steel Plant to pay an amount of Rs. 38.46 per day of actual attendance (not exceeding Rs 1000/- per month) to the workers deployed by contractor in the job in the form of AWA Allowance as per Circular No. Per/works/Co-order/10-3235 dated 16.08.2010 of BSL/SAIL as directed to implement the same w.e.f. 01.10.2011.”

15. On perusal of voluminous document it is noticed that document of BPSCL is printed in SAIL/Bokaro Steel Plant for example Ext. W-15, it is the pay slip of BPSCL employee which is marked during the cross examination of as MW-1. The Ext W-15 is the pay slip of BPSCL employee but it is under logo of BSL and print head of SAIL/ Bokaro Steel Plant. Hence now it is also proved that employee of BPSCL contract workers are discriminated among the contract workers working in the premises of SAIL-Bokaro Steel Plant and the contract workers working in the premises of BPSCL through various contractors. Both are in one premises, it is also proved through agreement that the BPSCL is the very important part of BSL, without BPSCL the BSL Plant will be paralyzed. Now it is strange that BPSCL contract worker is discriminated.

16. Considering the facts and circumstances of this case, I hold that the action of the management of Bokaro Power Supply Co, (P) Ltd., Bokaro in not allowing the payment of Additional Welfare Amenities @ Rs. 1000/- per month to the Contract workers engaged through contractors w.e.f 01/10/2009 at par with the contract workers working in the premises of Bokaro Steel Plant –SAIL is not justified. Therefore the management is directed to pay AWA to the all

Contract workers as per list provided by the Union which is given in the bottom of the award w.e.f oct 2009, and the formality of entire payment be completed within 3 months from the date of publication of the award as otherwise the management has to pay interest @ 6% P.M soon after the completion of the stipulated period of 3 months is over.

1.	FULESHWAR MANJHI	L127400	36	KAYUM ANSARI	L-127417
2	MANISH KUMAR	L-127287	37	BINOD KUMAR	L-127422
3	VIJAY KUMAR	L- 127391	38	NEHMIYA PURTI	L-127417
4	RAJESH KUMAR	L-127278	39	NARAYAN MAHTO	S-13381
5	SANJEET KUMAR MISHRA	L- 127289	40	JAGESHWAR MAHTO	L- 127418
6	ASHOK MANDAL	L-127280	41	BABULAL RAJWAR	L- 127421
7	ASIMUDDIN ANSARI	L-127401	42	MAHENDRA PRASAD	L- 127282
8	VINOD RAM	L-1 273 92	43	GOVIND MAHTO	L- 127285
9	ANIL MAHTO	L-127382	44	RITESH KUMAR SINGH	S- 13394
10	SUJIT KUMAR DAS	L-127379	45	KAILASH PRASAD MAHTO	L- 127377
11	SHAMBHU SHARAN SINGH	L-127390	46	SANJEEV KUMAR RAY	L- 127402
12	AJAY KUMAR	L-127266	47	JAINUL ANSARI	L- 127416
13	DHIRENDRA NATH RAY	L- 127380	48	BHAGAT KUMAR BAURI	L-127 349
14	PRAN KEWAT	L-127393	49	MD JABBAR ALAM	L- 127381
15	MEGH RAY MARDI	L- 127412	50	LAKSHMAN RAVIDAS	L- 127415
16	RAJIV KUMAR	L- 127277	51	THAKUR PD. MAHTO	L-127383
17	DASRATH KUMAR	L-127265	52	ARJUN BAURI	L-127275
18	SANJAY KUMAR	S-13370	53	BIJAYANTA KR. CHOUHAN	L-127387
19	MURLI PRASAD	L- 127281	54	RAM CHANDRA PRASAD	L- 127385
20	ANIL MAHTO	L- 127382	55	JIVAN MANJHI	L-127386
21	MANIK GOPE	L- 127381	56	RAVI KANT	L- 127267
22	BIBHUTI DEY	L- 127378	57	SANJAY KUMAR GUPTA	L- 127398
23	ASHOK KUMAR	L- 127425	58	MADAN GOPAL GOSWAMI	L- 127934
24	DHARMENDRA KUMAR	L- 127300	59	SUSHIL KUMAR	L- 127403
25	VIR BAHADUR PRASAD	L- 127298	60	ARVIND KUMAR	L-127276
26	ABHINANDAN KUMAR	L- 127299	61	SUKHDEO MAHTO	L- 127525
27	MUKUND MURARI SINGH	L- 127424	62	SANTOSH KUMAR MISHRA	L- 127268
28	RAJESH KUMAR SINGH	L- 127429	63	BASUDEO RAJWAR	L-128963
29	BABLU PANDIRA	L- 127427	64	SURAJ KUMAR	L-128964
30	FAGU BAGWAR	L- 127431	65	LAKHAN RAM	L-128956
31	HARDEO RAM	L- 127420	66	JITLAL MANJHI	L-128956
32	LAL MOHAN PRAMANIK	L- 127426	67	AJIT KUMAR MAHTO	L-128988
33	VIVEKANAND GUOUTAM	L- 127423	68	PRAKASH MAHTO	L-128994
34	KALESH WAR GOSWAMI	L- 127423	69	HAREN MAHTO	L-128992
35	BINOD KUMAR	L-127422	70	SONA RAM HEMBROM	L-128993

71	SUBHASH CHANDRA RAJWAR	L-128961	114	HARENDRA KEWAT	L-127406
72	SANTOSH KUMAR SOREN	L-128962	115	B. RAMU RAO	L- 127370
73	RAJU KARMKAR	L-128989	116	SHIV NATH BAURI	L-127311
74	LAL SAHEB SINGH	L-128991	117	BHOLA NATH DAS	S- 13374
75	KRISHNA KUMAR	L-129000	118	GANESH PATRA	L-127408
76	SUNIL MURMU	L-128965	119	GURUCHARAN RAJWAR	L- 127365
77	NEPAL SINGH	L-128996	120	GOBARDHAN SINGH	L- 127363
78	GOBIND RAM MAHTO	L-129002	121	MEGHNATH MURA	L-127336
79	JUDHISHTHIR MAHLI	L-128995	122	BINOD RAJWAR	L-127321
80	GOUTAM KUMAR SINGH	L-128997	123	DEEPAK GOPE	L-127368
81	ROTILAL DURGA	L-128998	124	DILIP KAPARDAR	L- 127339
82	KUNDAN PD. VERMA	L-129029	125	AJIT MAHTO	L- 127340
83	VIJAY KUMAR ACHARYA	L-128982	126	LANKESHWAR RAJWAR	L-127319
84	SHRIMANTA KUMAR	L-128985	127	MOHAN SINGH	L-127312
85	VISHWANATH MANJHI	L- 128986	128	RAGHUNATH SOREN	L-127362
86	CHOTU RAM MANJHI	L-128981	129	UPENDRA GOPE	L-127350
87	AJAY THAKUR	L-128984	130	JAMAL PURTI	L-127372
88	LALAN SHARMA	L-128983	131	RAMU MAHTO	L-127405
89	P. MAJHI	L- 064358	132	MANTU LAL MAHTO	L-127353
90	HAFIZUDDIN ANSARI	L- 129023	133	SUKHDEO BASKEY	L- 127368
91	SHANKAR SINGH	L-129025	134	MAKHRDHWAJ SINGH	L-127327
92	PANCHANAD MANDAL	L- 129026	135	RAM PD. BAWRI	L-127373
93	ANIL KUMAR MAHTO	L- 129024	136	BIRGU MANJHI	L- 127371
94	SHANKAR CHANDRA PODDAR	L-129022	137	PRADIP KUMAR	L-127355
95	RAJAN MAHTO	S-13375	138	NAND KUMAR	L-127359
96	AJIT MURA	L-127318	139	RAJENDRA SOREN	L- 127354
97	PURAN MURA	L-127334	140	JAGARNATH MANJHI	L-127407
98	SAPAN BAWRI	L- 127358	141	LAGU MAHTO	L-127369
99	RAM KUMAR BAWRI	L- 127320	142	HICHHAL RAM	L- 127409
100	SHANKAR MURA	L-127335	143	MANTULAL MAHTO	L-127353
101	HARILAL MANJHI	L- 127348	144	JAGARNATH MANJHI	L-127340
102	RAM PD. BASKEY	L- 127324	145	B. RAJU RAO	L-127343
103	BALDEO GOPE	L- 127333	146	DURGA BAURI	L-127311
104	BIPIN MAHTO	L-127347	147	BINOD RAJWAR	L-127321
105	NIWARAN MURA	L-127328	148	RADHU MUNA	L- 127310
106	MAHADEO RAJWAR	S- 13373	149	RAGHU MUNDA	L-064454
107	OM NATH MAHTO	L-127322	150	RAM PD. BAURI	L-127373
108	BIRJU BAWRI	L- 127345	151	SACHI NANDAN RAJWAR	L-127364
109	ARGEN AKKA	L- 127308	152	RAJESH RAJAK	L- 127337
110	SHIV PD. RAJWAR	L-127330	153	MAHESH SINGH	L-128884
111	JIT LAL MANJHI	L-127314	154	SAPAN RAY	L- 128882
112	KESHAW MANJHI	L-127317	155	BINOD KARMKAR	L-123879
113	MARIAM BARLA	L-127361	156	ROSHAN LAL	L-128877

157	MANISH KUMAR	S-13599	199	MRITUNJAY KUMAR	128617
158	DEVA NAND RAJWAR	L-128874	200	ARJUN KUMAR	128618
159	ASHIF KAMAL KHAN	S-13600	201	VIDIYANAND PRASAD	128619
160	RANJEET TURI	L-128876	202	JANARDAN PRASAD	128620
161	AJAY KUMAR	L-128825	203	NEEL KAMAL KUMAR	128622
162	SANTOSH KUMAR SINGH	L-128352	204	S.B. DAS	125626
163	SHIV DHAN SINGH	L-12887	205	TINKU DIGAR	125629
164	TULSI RAJWAR	L-128817	206	SUNIL MAHTO	125627
165	KHEDAN MHATO	L-128830	207	PANKAJ RAY	125628
166	PANCHANAN KALINDI	L-128867	208	GOLBABU ANSARI	----
167	SANDIP KUMAR SINGH	L-128826	209	PRADIP KUMAR SAHU	L-091445
168	GAUTAM CHANDRA RAJWAR	L-128883	210	LALU RAI	L-100431
169	BIRENDRA KUMAR	S- 13365	211	RAVI KUMAR	L-120120
170	VINOD KUMAR	L-130120	212	LALIT TURI	L-130855
171	VIRENDRA SINGH	L-124761	213	SUNIL KUMAR MAHTO	L-100432
172	MD. SHAMIM	L-100914	214	GADADHAR MANDAL	L-114840
173	PRABHAT KUMAR	L-100913	215	NISHAR ANSARI	L-131761
174	VIJAY KUMAR BAWARI	L-114324	216	MANOJ RAWANI	L-131762
175	JAGDISH BIRUA	L- 114320	217	JAYPAL HEMBRAM	L-100429
176	RADHESHYAM	L-114326	218	AQSRAF ANSARI	L-131760
177	HARERAM KUMAR	L-114321	219	RUPESH KUMAR MODI	L-130854
178	PRAMOD KUMAR SINGH	L-114315	220	HAIDER ALI	L- 131759
179	JITENDRA KUMAR	L-114323	221	MANSINGH PURTY	L-100433
180	MANOJ KUMAR SINGH	L-116391	222	VIJAY KUMAR	L-131758
181	VINOD KUMAR	L-130119	223	KRISHNA SINGH	L- 114849
182	SANTLAL KUMAR	L-114319	224	BALRAM BANDIA	L-100430
183	RAKESH SHARMA	L-100915	225	SURESH YADAV	L- 114845
184	CHANDRA BHUSHAN KUMAR	L-114316	226	DHARAMRAJ RAJAK	L-096176
185	SUNIL KUMAR	L- 114330	227	TAPAS MANDAL	L-096125
186	BIOND KUMAR PRASAD	L-131902	228	NIRANJAN KUMAR SINGH	L-127837
187	CHAKESHWAR KUMAR SINGH	L-131908	229	KASIM ANSARI	L-127724
188	BATUL MISHRA	L-131910	230	SURESH PD. SAHANI	L-127836
189	KAILASH RAVIDAS	L-131909	231	BITU MUNDA	L-127834
190	KATI MANJHI	L-131906	232	RAJDEV MANJHI	L-127723
191	SUBHASH SAW	L-131901	233	JITENDRA KUMAR DIGAR	L-127726
192	AMIT KUMAR BARDHAN	L-131911	234	LALAN KUMAR TIWARI	L-090427
193	BABLU KUMAR PANDEY	L-131907	235	DOMAN SUNDI	L- 118784
194	RAJU SAW	L-131904	236	RAMU SOREN	L-118971
195	MUNNA SINGH	L-131905	237	SONU CHAMPLIA	L- 118790
196	DENISH TIRKEY	L-131903	238	MANSIDDH MUNDA	L-128759
197	MD. ALAM ANSARI	128615	239	RAKESH KUMAR DUBEY	L-128758
198	BASUDEV MAHTO	128616	240	NAG RAJ MUNDA	L-128913

241	BUDH RAM HEMBRAM	L-128911	255	GOUTAM GHOSH	L-128010
242	SIKANDAR HASDA	L-118791	256	VEDRAJ YADAV	L-127974
243	MANDAN MISHRA	L-118785	257	ARJUN KUMAR MEHTA	L-128020
244	KRISHNA DANGIL	L-118783	258	LAXMAN KUMAR	L-127961
245	SUKARA MUNDA	L-128914	259	BHAGIRATH KARMKAR	L-127962
246	MOHAN SINGH	L-121535	260	PRASHANT KUMAR ROY	L-127977
247	SAMBARI HERENJ	L-128757	261	ASHOK BAURI	L-127978
248	BISWANATH MUNDA	L-128912	262	PARMESHWAR MAHTO	L-128015
249	FRANSIS TOPNO	L-128760	263	YAMUNA PRASAD SINGH	L-128006
250	SUNIL GUAN	L-128754	264	GYANDA PRASAD BAURI	L-128022
251	VIRENDRA SINGH	L-118973	265	PRADEEP SINGH	L-127966
252	ASHOK KUMAR SINGH	L-127272	266	JAINUL ANSAR I	L-127971
253	AJAY KUMAR SINGH	L-127967	267	SHIVA BEHRA	L-127963
254	JAGDISH RAJWAR	L-127963			

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 7 अप्रैल, 2017

का.आ. 918.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डियन ऑयल कार्पोरेशन लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बंगलूर के पंचाट (संदर्भ संख्या 25/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-30011/10/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 7th April, 2017

S.O. 918.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2014) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd. And others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-30011/10/2014-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 1st NOVEMBER, 2016

PRESENT : Shri V. S. RAVI, Presiding Officer

C R No. 25/2014

I Party

Sh. V. V. P. Nair, Proprietor,
M/s. System Security Services, G-3,
Eden Garden Housing Society,
Airport Road, Adarsh Nagar,
Chicalim, Vasco-da -gama
Goa.

II Party

The Chief Plant Manager,
IOCL, LPG Bottling Plant,
Hosakote Taluk,
Bangalore.

AWARD

1. The Central Government vide Order No.L-30011/10/2014-IR(M) dated 08.07.2014 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the action of the management of Mr. V.V.P. Nair, System Security Services, Gao, Shri Ramaraju, V.K. Enterprises, Bangalore; Major Arvind Murabutte, Contractors, Bangalore, in refusing to discuss/consider the charter of demands dated 23.03.2011, raised by the Karnataka Petroleum & Gas Workers Union is legal and justified? If not, to what relief the Union are entitled to?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. None appeared for the Ist party and Ist party also called absent. Infact, notice of hearings have been sent to the I party by RPAD through the Department of Posts, India. Still, no representation has been made on behalf of I party and also, I party is called, absent.

3. On perusal of records already notices have been sent to both the parties through the RPAD, by this Tribunal. Hence, it is found that inspite of giving sufficient and adequate chances by issuing notices of hearing to I party, the I party has not made any appearance. In such circumstances, the matter is posted for passing Award, after the perusal of entire records brought on record.

4. Further, from the above mentioned circumstances, it would be very much clear, in the present matter, that the I party has no interest to contest the present matter, inspite of the service of notices of hearing to the I party. It is for the I party to make out a case that I party is entitled to the above mentioned benefits and that the management has done a mistake by denying the said benefits. Under the above mentioned special circumstances and peculiar facts, this Tribunal is constrained to pass appropriate award, after the perusal of materials available on record.

5. Since no appearance has been made and also claim statement has not been filed and further no case has been made out by I party and the present reference has only to be rejected for non- prosecution. Therefore, keeping in view the conduct of I party in, not appearing before this Tribunal, even though notices have been sent to the I party by way of RPAD and the conduct of I Party in not filing claim statement, in support of the said reference, it is crystal clear that the I party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it is to be held that the present reference has to be rejected, for non prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following award.

AWARD

Reference is dismissed for non-prosecution.

(Dictated, transcribed, corrected and signed by me on 1st November, 2016)

V. S. RAVI, Presiding Officer

नई दिल्ली, 7 अप्रैल, 2017

का.आ. 919.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसूर मिनरल्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 26/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29012/28/2006-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 7th April, 2017

S.O. 919.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29012/28/2006-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT,
BANGALORE

DATED : 17th FEBRUARY, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

C R No. 26/2007

I Party

Sh. K.N. Annaiahchari, (Workman deceased)
 S/o Late Ningachari, MML Worker,
 Kembalu Village and Post Bagur Hobli,
 Channarayapatna Taluk,
 Hassan District.

I party represented by his L.R's :

1. Smt Gowramma W/o Late K. N. Annaiahchari.
2. Smt Pushpa, D/o Late K. N. Annaiahchari,
3. Smt. Renuka D/o Late K. N. Annaiahchari,
4. Sri K. Raju, S/o Late K. N. Annaiahchari,
5. Sri K.A. Prakash, S/o Late K. N. Annaiahchari,

All residing at Kembalu Village and Post Bagur Hobli,
 Channarayapatna Taluk, Hassan District.

**(For I party, M/s K.T. Govinde Gowda & Sh. C.G.
 Dileep Gowda, Advocates)**

II Party

The Managing Director,
 Mysore Minerals Limited,
 No. 39, M G Road,
 Bangalore.- 560001

(For II party Mr. L. Venkatarama Reddy,
 Advocate)

AWARD

1. The Central Government vide Order No.L-29012/28/2006-IR(M) dated 23.02.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the management of Mysore Minerals Limited is justified in terminating the services/premature superannuating of the services of Sri K.N. Annaiahchari w.e.f. 29.06.1998? If not, to what relief the workman is entitled to?”

2. Brief details mentioned in the Amended Claim Statement filed by LR's are as follows:-

- a) Smt. Gowramma,
 W/o. Late K.N. Annaiahchari,
 Aged about 67 years
- b) Smt. Pushpa,
 D/o. Late K.N. Annaiahchari,
 W/o. Sh. Swami,
 Aged about 50 years
- c) Smt. Renuka,
 D/o. Late K.N. Annaiahchari,
 W/o. Sh. Nagaraj,
 Aged about 47 years,
- d) Sri. K.A. Raju,
 S/o. Late K.N. Annaiahchari,
 Aged about 44 years
- e) Sri. K.A. Prakash,
 S/o. Late K.N. Annaiahchari,

Aged about 41 years, are the Legal Representatives of the deceased workman, K.N. Annaiahchari. The deceased workman has joined on 20.07.1981, in the service of the II Party management at its Mining Unit viz., Byrapura Chromite Mines, Bagur Hobli, Channarayapatna Taluk, Hassan District, as a Mining worker. The I Party has furnished his age as 35 years i.e, his date of birth being 18.08.1946, as per the Horoscope maintained by his parents as per the family tradition and custom. The II Party accepted the same as true, in the absence of Certificate of Registration of birth. The said date of birth infact has been entered in all the statutory records like EPF, B-register and Service records, etc. Further, the II Party by eye wash conducted the so called illegal Medical Examination for the purpose of removing the I Party from his service before reaching the age of superannuation. Further, on 28.08.1998 the II Party, Bhaktarahalli Mines Officials, orally refused to allow the I Party to do his work w.e.f 29.06.1998 on the plea that the I Party has reached his superannuation age of 58 years as per the so called illegal Medical Examination. Immediately the I Party met the II Party Mines Officials number of times and explained to them about his correct age and requested them to permit him to work till he attains the age of superannuation i.e, 58 years. After illegal termination the I Party has faced unemployment problem and financial hardship, and also his family members. The entire family has depended only upon the earnings of the I Party in the II Party Organization. Some of the co-workers have challenged their pre-mature retirement and age certification before the Hon'ble High Court of Karnataka, viz., 1) Writ Petition No. 5615/2001 between Smt. K.Dundamma Vs MML, and the same Management of II Party challenged the same in Writ Appeal No. 3460/2001 C/W W.No. 3459/2001. The said Appeal has been rejected on 12.06.2002 confirming the single Judge order dated 29.03.2001. In view of the said decision the Management reinstated the above mentioned pre-matured retired employee with payment of back wages, with continuity of service thereon.

(2) Writ Petition No. 26101/2001 C/W W.P.Nos. 23798/2001, 23797/2001 & 23794/2001 filed by Sri. V.C. Range Gowda and 8 others Vs MML, have been allowed on 01.06.2006.

On account of the illegal payment and other lapses, in the II Party Management, it has to face the administrative problems. Further, the II Party used the illegal, imaginary, hypothetical and unscientific Medical report as its tool for unilaterally deciding the age of I Party and other workers. The II Party is not justified in law in refusing the employment, w.e.f, 29.06.1998 to the said workman, without any basis and also, in an arbitrary and unscientific manner. The II Party having not followed the Mandatory provisions of Section 25 F, G, H & N of the Industrial Disputes Act, 1947 and Rules 78 and 79 thereon, the action of the Management is, therefore, void-ab-initio as laid by the Hon'ble Supreme Court of India in the case of Sundaramani Vs State Bank of India, Santhosh Gupta Vs State Bank of India, Robert D'Souza Vs Southern Railway, K.S.R.T.C.- Bangalore Vs Boraiaha and others and also violated the Provisions of Industrial Dispute Act, 1947. The II Party Management is not justified in retrenching the service of the I Party w.e.f. 29.06.1998, in summary manner, without any regards to the principal of Natural justice and fair play. The I Party belongs to socially and economically weaker section and also, he is the Rural based worker and used to work in Mines, which is in a remote place of the village and the I Party is also an illiterate worker belonging to Economically weaker section & not a matching party to fight against the II Party, for the injustice done by the II Party. The Officials of the II Party Management have taken undue advantage of I Party's poverty, illiteracy, Economic weakness, social weakness and the II Party has taken the weapon for victimizing the I Party by way of refusing employment, knowing fully well that the I Party is most incapable in approaching the Labour Department Authorities [ALC] for redressal of his grievances. Under the Industrial Dispute Act, there is no limitation prescribed for raising the dispute, and the Article 137 of schedule to the limitation act is not applicable to proceedings under I.D. Act. The said point is repeatedly decided by the Hon'ble Supreme court of India and Hon'ble High Courts of various states viz.,

- 1) LLJ-II-2001-pg 788-792 [SC]
Sapan Kumar Pandit Vs U.P. State Electricity Board and others
- 2) LLJ-I-1999-pg 1260-1265 [SC]
Ajaib Singh Vs Sirhind Co-operative Marketing-cum-processing service society.
- 3) LLJ-II-1999-pg 482-483 [SC]
Mahavir Singh Vs U.P. State Electricity Board and others
- 4) LLJ-I-2003-pg 415-414 [MP]
Ramadhar Tiwari Vs Union of India and others
- 5) LLJ-I-1994-pg 468-471 [All]
U.P. State Spinning Mills Co. Vs State of U.P. & others
- 6) LLJ-II-2003- pg 1143-1145 [Ori]
Management of Aska Co-operative Central Bank Ltd. VS State of Orissa
- 7) LLJ-I-2002- pg 204-206 [Mad]
E.E. Construction Division 2, Mannarpuram, Trichy and Another Vs M. Gajapathy and Another

- 8) LLJ-I-2002-pg 1079-1081 [Del]
Mangal Singh Vs Presiding Officer, Industrial Tribunal No. 1, Delhi and Another
- 9) LLJ-I-2002-pg 1129-1132 [Bom]
Haribhau S/o. Gaman Waghchaure Vs State of Maharastra and Another

Therefore, it is prayed that this Court may be pleased to pass an Award holding that the action of the II Party Management is not justified in Terminating the services/premature superannuating of the I Party services w.e.f 29.06.1998 and direct the II Party to pay the full back wages and other consequential benefits from the date of termination i.e, 29.06.1998 and further the Award of cost of this proceedings in the interest of justice and equity.

3. Brief details mentioned in the counter statement are as follows:-

The II Party states that the dispute raised by the I Party is totally perverse, frivolous and misconceived, and there is no merit in the dispute, in question, raised by the I Party. The I Party has been granted 30 days time to prefer appeal before Appellate Medical Board as per Rules. The I Party has waited for the result in the case filed by the co-workers who approached Hon'ble High Court of Karnataka. The I Party who has waited for the result of co-worker before Court of law, cannot be permitted to approach Court at the inspiration of success of co-worker. Hence, the conduct of the I Party does not deserve any relief at the hands of this Tribunal. The said expert team have examined the I Party and found the incapacity to work in the mine, in view of the fact that the I Party, aged more than 58 years as on the date of Medical Examination. The I Party who has amicably settled his monetary benefits with the II Party and has no right to raise present dispute after lapse of 8 years, at instigation, for the wrongful gain. The Medical Examination has been conducted in Scientific Manner on thorough investigation. The action of the II Party is in accordance with law. The I Party is happily working elsewhere since form the date of his termination. The II Party has not changed the date of birth of I Party as alleged by him. In fact, the I Party is employed elsewhere and earning salary. The II Party has not acted illegally or arbitrarily. The entire procedure followed by the II Party is in accordance with law and in consonance with the standing orders, circulars, service rules and Mines rules.

4. The pertinent point that arises for consideration in the present matter is:-

“Whether the II Party is justified in terminating service/premature superannuation service of I Party-workman Sh. K.N. Annaiahchari w.e.f 29.06.1998? If not, to what relief the I Party is entitled to get?”

5. Analysis, Discussion Findings with regard to the above mentioned point:-

On behalf of II Party, MW -1 Assistant Manager of II Party, has been examined as MW-1. MW-1, has stated that, the document shown to him is the attested copy of B register pertaining to I Party and the Service record (the documents identified by the witness are marked as Ex M-1 and Ex M-2). Further, in the Ex M-1 namely, the Register of Employees, it is clearly pointed out about the date of birth of workman-K.N. Annaiahchari as 20.07.1946. Further, MW-1 has clearly admitted that, it is true to suggest that the working conditions as per the Mining Act have not been provided at the Mines and the company suffered loss of about 21 crores in Shimoga and Hassan Districts and it is also true to suggest that due to the financial crises occurred and having suffered the loss the management thought of reducing the number of workers. Further, MW-1 has specifically admitted that, it is also true to suggest that at this juncture the management ordered for Medical Examination of all the Mining Workers and MW-1 has not produced the Medical Certificate issued by the Doctor who has examined the I Party's health condition and the doctors have not conducted the Medical Examination in his presence and he has to verify in the office whether copy of such notice or acknowledgement regarding service of notice on the I Party is available or not.

6. Further, MW-1 has also particularly admitted that as per clause 18 and 24 any termination has to be followed by enquiry along with 3 months notice pay and it is true to suggest that along with the termination order issued to the workman, 3 months salary has not been paid and the documents shown to him are the copy of termination order and the true copies of orders passed in WP No. 5615/2001 (SS) and WA No. 3460/2001 clubbed with 3459/2001 (SS); 2610/01 and others (the said documents shown to the witness and admitted by him as true copies and also are marked as Ex W-1 to Ex W-4 respectively). On that ground only, the I Party has specifically stated in the claim statement that certain workers have challenged the premature retirement and the Writ Petition have been allowed in favour of the said workman and the Writ Appeal filed by the Management of MML, has been dismissed and also, in view of the said order, the II Party has reinstated the premature employees with payment of back wages and also, continuity of service thereon. Further, MW-1 has clearly admitted that the II Party has not produced the Medical Certificate issued by the Doctor, who examined the I Party's health condition, and it is true to suggest that the Medical Certificate, has not been attached with the termination order issued to I Party, and the date of birth once recorded will not be changed at the request of Officer/employee under any circumstances. Further, MW 1 has specifically admitted that, the I Party is an illiterate person and the company has not furnished him the Kannada version/translation of Medical Certificate which is in English. On a careful scrutiny of the said evidence of MW-1, and also, the II Party record itself it is crystal clear that the Date of Birth entered is 20.07.1946 and also the II Party is not justified in terminating the services of workman

w.e.f. 29.06.1998, as clearly and specifically held by the Hon'ble High Court of Karnataka for the co-worker, in the above mentioned Writ Petition and Writ Appeal orders. On that ground only the LR's of the deceased workman have rightly claimed monetary benefits from 29.06.1998 to 20.07.2004, as the workman would reach the superannuation date on 20.07.2004.

7. Further, as per Ex W-5 only on 22.08.2008 the age of the workman of II Party has been enhanced from 58 years to 60 years. However in the present case the workman will retire on 20.07.2004 itself, after attending the age of 58 years. Hence, the said enhanced retirement age circular is not applicable to the said workman. However, it's found that the said LR's are entitled to get monetary benefits from 29.06.1998 to 20.07.2004 and consequently the LR's are entitled to get 1/5th share each for the said amount. Further, as per Ex W-6, the LRs have filed the Death Certificate of the workman and also, as EX W-7, Genealogical tree issued by the Village Accountant. Further, it is seen that the II Party/Management is adopting super technical and hyper technical measures, so as to stop, the LR's of the deceased workman, from getting legal benefits, as the II Party/Management witness has specifically admitted in his evidence that the said workman is an illiterate person. Further, the intension of the legislature in enacting the social welfare provisions of Industrial Disputes Act would be defeated, if the untenable submissions of the II Party/Management are taken into consideration. For the above, mentioned reasons, it is found that, the LR's of the deceased workman are entitled to get 1/5th share each, from the back wages and other consequential monetary benefit amount payable to the deceased workman- Sh. K.N. Annaiahchari from 29.06.1998 to 20.07.2004, for the above mentioned factual reasons and also, legal grounds. Accordingly, the following award is passed.

AWARD

The II Party is not justified in terminating the service/premature superannuating of the services of I party/K.N. Annaiahchari – workman, w.e.f 29.06.1998 and II Party is directed to pay back wages and other consequential monetary benefits to the LRs of the deceased workman, namely, the above mentioned LR's by paying 1/5th share each, from the back wages and other consequential monetary benefit amounts payable to deceased workman from 29.06.1998 to 20.07.2004, and the award is passed accordingly, without cost for the above mentioned peculiar facts and circumstances.

(Dictated, transcribed, corrected and signed by me on 17th February, 2017)

V. S. RAVI, Presiding Officer

List of Witness on the side of I Party:

WW 1	Sh. K.N. Annaiahchari, I Party/ workman
WW 2	Sh. K.A. Prakash, S/o. I Party/Deceased workman

List of Witness on the side of II Party:

MW1	Sh. Somanna, Assistant Manager
-----	--------------------------------

Exhibit marked on behalf of I Party:

Exhibits	Date	Description of Document
Ex W-1	29.06.1998	Termination order
Ex W-2	29.03.2001	Writ Petition No. 5615/2001 (S-RES) order
Ex W-3	12.06.2002	Writ Appeal No. 3460/01 C/W W.A No. 3450/01(S) order
Ex W-4	01.06.2006	W.P. No. 26101/01 order
Ex W-5	22.08.2008	Letter relating to enhancing the superannuation age from 58 years to 60 years
Ex W-6	23.01.2013	Death Certificate of I Party
Ex W-7	28.01.2013	Genealogical tree

Exhibit marked on behalf of II Party:

Exhibits	Date	Description of Document
Ex M-1	-	Register of Employees
Ex M-2	-	Employees Service record

नई दिल्ली, 7 अप्रैल, 2017

का.आ. 920.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डियन ऑयल कॉर्पोरेशन लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 68/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-30012/6/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 7th April, 2017

S.O. 920.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 68/2014) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Corporation Ltd. and others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-30012/6/2014-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,****CHENNAI**Thursday, the 23rd February, 2017**Present : K.P. PRASANNA KUMARI, Presiding Officer****Industrial Dispute No. 68/2014**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Oil Corporation Ltd. and Another and their workman)

BETWEEN :Sri P. Selvam : 1st Party/Petitioner**AND**

1. The Plant Manager : 2nd Party/1st Respondent
Indian Oil Corporation Ltd.
Indane Bottling Plant, Odiyampet
Villianour, Puducherry
Puducherry-605110
2. LPG Packed Cylinder Transporters : 2nd Party/2nd Respondent
Indane Bottling Plant, IOC Ltd., Odiyampet
Villianour, Puducherry
Puducherry-605110

Appearance :

For the 1 st Party/Petitioner	:	M/s V. Ajoy Khose, S. Manogaran, Advocates
For the 2 nd Party/1 st Management	:	M/s T.S. Gopalan & Co., Advocates
For the 2 nd Party/2 nd Management	:	M/s J. Senthil Kumar, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-30012/6/2014-IR (M) dated 11.08.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of LPG Packed Cylinder transporters in terminating Sri P. Selvam without an enquiry is legal and justified? If not, what other relief the workman is entitled?”

2. On receipt of Industrial Dispute this Tribunal has numbered it as ID 68/2014 and issued notices to both sides. Both sides entered appearance through their counsel and filed their Claim and Counter Statement respectively.
3. The petitioner has filed Claim Statement contending as below:

The LPG Bottling Plant at Villianour, Puducherry is owned by the First Respondent. Initially the Bottling Plant functioned in one shift. Later, on increasing production it was functioning in two shifts. The First Respondent employed workmen in the name of contract labourers to carry out handling, loading and unloading and house-keeping work in the Bottling Plant. The workmen working in gas filling division of the plant has been transferred to loading and unloading as the work of loading and unloading of filled gas cylinder was very tough. This work was being done on rotation basis to alleviate the work load. The petitioner has been working in the Second Respondent Bottling Plant as an Office Boy from March 2005. In the year 2009 he was asked to work in the loading and unloading section. Though, he was told it was temporary he was compelled to continue his service in the Section. The contract labourers including the petitioner have been working in the Gas Filling Section and also loading and unloading section. The workmen were working on rotation in both Sections. However, after 30.04.2012 contract was awarded to a new concern and it took the stand that workmen carrying out gas filling alone would come under the purview of the contract and that workmen working in loading and unloading section would not come within the purview of the contract awarded to it. So the Second Respondent was appointed to take charge of the workmen working in loading and unloading section. The rotation system that was prevailing earlier came to an end by this. The work load of the loading and unloading workers doubled consequently. On 25.03.2013 the petitioner told the IOC official that even the loading of 17 lorry loads of filled-in cylinders was heavy and asking them to load three more loads was not fair and this was impossible also. The official got angry and shouted at the petitioner. He gave instruction to stop the gas filling work and asked the petitioner to leave the workplace immediately. The petitioner was told that a suspension order will be issued to him. The Second Respondent issued an order placing the petitioner under suspension w.e.f. 25.03.2013. He was not given any subsistence allowance. He was not issued with a charge memo. In spite of that he was asked to attend an enquiry on 23.05.2013. It was postponed and posted to 07.06.2013. On this date the petitioner denied the allegations against him. In the enquiry only the proprietor of the Second Respondent was present. Witnesses were not examined and documents were not marked. The petitioner was dismissed from service by order dated 01.07.2013. The enquiry was conducted against the principles of natural justice. The petitioner was dismissed by way of victimization for questioning the illegal increase of workload and that too without notice and contrary to Section-9A of the ID Act. The petitioner has raised the dispute accordingly. The petitioner was without any employment from the date of his suspension. An Award may be passed holding that dismissal of the petitioner from service is illegal, and directing the Respondents to reinstate him with continuity of service, backwages and all other attendant benefits.

4. The First Respondent has filed contending as below:

The petitioner was employed by Second Respondent and was terminated also by the Second Respondent. The Second Respondent alone is answerable to the claim. The First Respondent is not liable to meet the claim of the petitioner. As per the terms of the settlement dated 10.01.2012 no target was fixed for packed cylinders to be handled in a shift. The number of cylinders to be handled per shift would marginally vary depending upon the size of the cylinder. It has nothing to do with the total weight of the cylinders. The contract workmen who were attending to the loading of cylinders had erroneously assumed that they were made to load cylinders more than the capacity of the plant. On 25.03.2013 the Officer of the First Respondent visiting the filling area found that the contract workmen were slowing down work. When this was questioned by the official he was answered in a discourteous manner shouting that they were made to work beyond the capacity of the plant and this incident was reported to the second Respondent. Disciplinary action was taken against the petitioner and another workman. After enquiry both of them were dismissed from service on 01.07.2013. As per the contract between the First and Second Respondents whatever number of cylinders that were filled in a shift would be loaded on availability of trucks. After cessation of employment of the

petitioner the output of the plant was considerably reduced. An Award is to be passed rejecting the claim of the petitioner against the First Respondent.

5. The Second Respondent has filed Counter Statement contending as below:

The Second Respondent consists of 29 transporters owning 36 vehicles. In the year 2012, when the contract of the existing Contractor ended on 31.08.2012 the First Respondent insisted that the transporters should bring their own men for loading and unloading of the packed and empty cylinders. The Contractors nominated one among them as the representative. The 12 workmen who were earlier working on contract and also two Supervisors were appointed on behalf of the Second Respondent. The petitioner and other 11 other workmen were working for the Second Respondent from 01.09.2012. Ramani, one of the transporters has been nominated as the representative to take over the responsibility of the work. As per the Long Term Settlement between the Second Respondent and the IOCL Employees Union the bottling target in existence was removed and production was to be done as per requirement during working hours in the shift. The workmen were given increased wages on the basis of this settlement. On the instigation of Tamil Nadu Petroleum and Gas Workers Union the petitioner and another workman Subramaniam refused to carry out loading and unloading work from the first week of March 2013. On 25.03.2013 the petitioner and Subramaniam abused the Officers. Disciplinary action was taken against the two in this context. On enquiry they were found guilty of the charges and were dismissed from service. Subramaniam the other workman who was dismissed gave a letter admitting his misconduct and pleaded for leniency. Accordingly, he was taken back as contract labour on 07.01.2015. The petitioner also can give similar letter as was done by Subramaniam. Dismissal of the petitioner was preceded by an enquiry. If the enquiry is found vitiated the Second Respondent may be given opportunity to lead evidence in support of the charges. It is incorrect to state that the Second Respondent has resorted to unfair labour practice. The petitioner is not entitled to any relief.

6. The evidence in the case consists of oral evidence of WW1 and MWs 1 and 2 and documents marked as Ext. W1 to Ext.W17 and Ext.M1 to Ext.M24.

7. **The points for consideration are:**

- (i) Whether the termination of the petitioner by the second Respondent is legal and justified?
- (ii) What if any is the relief to which the petitioner is entitled?

The Points

8. The petitioner has been working in the loading and unloading section of the LPG Bottling Plant, Villianour, Puducherry owned by the First Respondent. The Second Respondent is the one who was awarded the contract of handling the loading and unloading section of the Bottling Plant From 01.09.2012. The Second Respondent is in fact a group of transporters who had been transporting LPG cylinders for the First Respondent. The petitioner and 11 others were engaged by the Second Respondent for doing the loading and unloading work. In fact these workmen have been working in the plant even earlier when work was handled by other Contractors.

9. Unrest seems to have prevailed among the workmen as they felt that they were made to work more than the capacity of the plant by the Second Respondent. Even as admitted in the Claim Statement the petitioner seems to have questioned an official on 25.03.2013 for the heavy work they were allegedly made to do. According to the petitioner, the official has become angry because of this and it was by victimization a namesake enquiry was conducted without any charge and he was dismissed from service.

10. The case that is put forth by the First Respondent in the Counter Statement regarding what had taken place on 25.03.2013 is that the official of the First Respondent Mahesh Venkat who visited the gas filling area found that the contract workmen were slowing down the work and questioned them and they retorted in a discourteous manner shouting that they were made to work beyond the capacity of the plant. According to the Second Respondent the petitioner and another workman Subramaniam had refused to carry out the loading and unloading work from the first week of March 2013. This has resulted in bickering between the contract workmen and the Supervisors. On 25.03.2013 the petitioner and Subramaniam had abused the Officers. It is accordingly disciplinary action is said to have been taken against the petitioner and Subramaniam.

11. The petitioner had contended in the Claim statement that the domestic enquiry against him was not conducted in a fair and proper manner. This issue was considered as a Preliminary Point and this Tribunal has found the point in favour of the petitioner. Both sides have let in evidence before this Tribunal to substantiate the case consequently.

12. As already stated, the reason for the dismissal of the petitioner given in the Counter Statement of two Respondents by and large is the incident that had allegedly taken place on 25.03.2013. Ext.M16 is the Suspension Order given to the petitioner on 25.03.2013 itself. It is stated in this that the petitioner has not been doing this work for

almost one week. It is further stated that he has abused the Officers of the Indian Oil Corporation by around 0730 AM and has also asked irrelevant question about the bottling capacity of Pondicherry Bottling Plant which is not connected with his work and so he is being put under suspension. The petitioner seems to have been asked to appear for an enquiry without framing a charge of the misconduct said to have been committed by him. Ext.M17 is the letter stating that the Second Respondent is not satisfied with the reply that was given by the petitioner and therefore he is to appear for an enquiry. Thus it could be seen that apart from the Suspension Order there was nothing to tell the petitioner on exactly what charge he was to face the enquiry.

13. What is the evidence available regarding the allegations made against the petitioner? MW1 is the representative of the Second Respondent. He has stated during his evidence that he was not available in the factory premises on 25.03.2013. He does not have personal knowledge of what had happened on this date. There is no case for MW1 in the affidavit that the petitioner and the other workman who were dismissed from service or the entire workmen had slowed down work. He had only referred to a previous altercation involving the two workmen, without giving the date. Such an incident is not given even in the Suspension Order. So the evidence of MW1 is not of any use in establishing the incident that had allegedly taken place on 25.03.2013 or even at an earlier time.

14. The Second Respondent has been relying upon the e-mail said to have been sent by the concerned official of the First Respondent. Ext.M4 is an e-mail said to be sent by Mahesh Venkat to one Ganesh. In this it is stated that when he was at the loading site on 25.03.2013 he had found that a particular vehicle has not been loaded resulting in the unit getting jammed and he had questioned the petitioner and another workman Subramaniam who were loading the particular vehicle and they have behaved in an indecent manner and told him that they were being cheated by asking to do extra work. For one thing, the author of the e-mail is not examined. Ext.M4 is only the form of an e-mail, the authenticity of which is not established by examining the author. Apart from this, even assuming that this is the correct version of what had occurred on 25.03.2013 it does not state that the petitioner and the other workman had behaved in a manner questioning the authority of the Officer. The e-mail of course states that the workmen behaved in an indecent manner. However, what is described as indecency on the part of the workmen is that they have alleged that they were being cheated by asking the workmen of the shift to load 38 loads when the plant capacity was only 22 loads. It is also stated that the workmen have asked him to bring proof to show that the plant capacity is 34 to 38 loads. Ext.M5 is an e-mail by a Deputy Manager of IOCL addressing MW1 stating that the petitioner and Subramaniam, the other workman have been misbehaving with all employees and plant officials. The author of this e-mail also is not examined. In any case this person does not seem to have been at the unit at all. His knowledge must be only by way of information. The suspension of the petitioner seems to have been based on these two e-mails. The Second Respondent does not seem to have enquired what exactly happened at the work place on 25.03.2013 or even days prior to that. These two e-mail are not at all sufficient to establish the misconduct alleged against the petitioner.

15. The other workman, Subramaniam had allegedly written a letter of apology to the Second Respondent and has been taken back in service. This workman had been examined as MW2. He has stated in the Proof Affidavit filed by him that he has realized his mistake, expressed regret and has given a letter of apology. The letter is marked through him also. Based on the evidence of MW2 an attempt has been made on behalf of the Second Respondent to show that if MW2 has admitted guilt, necessarily the petitioner also must have committed the misconduct. However, it could be seen from the admission made by this witness during his cross-examination that he had given a letter of regret as he very much wanted to get back in service. He has admitted during his cross-examination that it was because of his family circumstances he has given a letter of apology and got employment. He has further stated that the contents of his explanation regarding the incident on 25.03.2013 and the statement made by him in the enquiry proceedings are true. Evidently, he has taken the stand in the enquiry proceedings and also in his explanation that the allegations made against him are false. The mere fact that MW2 has given a letter of regret will not establish the case against the petitioner.

16. During the proceedings it was suggested to the petitioner that if he gives a letter of regret he can be taken back in service. In the Proof Affidavit filed by him also MW1 has stated this. However, the petitioner has stated that he does not want to give a letter of regret as he has not committed any misconduct. The available evidence is not sufficient to establish the allegations made against the petitioner. So the Second Respondent who have engaged the petitioner is bound to reinstate him in service. Accordingly an Award is passed as below:

The Second Respondent is directed to reinstate the petitioner in service with 50% backwages, within two months of the publication of the Award. The amount will carry interest at the rate of 6% if not paid within time. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 23rd February, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1 st Party/Petitioner	:	WW1, Sri P. Selvam
For the 2 nd Party/Management	:	MW1, Sri M. Ramani
		MW2, Sri M. Subramanian

Documents Marked :**On the petitioner's side**

Ex.No.	Date	Description
Ext.W1	12.06.2012	Information received from Indian Oil
Ext.W2	25.03.2013	Letter from LPG Packed Cylinders regarding suspension Order
Ext.W3	08.05.2013	Representation made by the petitioner
Ext.W4	15.05.2013	Show Cause Notice issued by LPG Packed Cylinders Transporters
Ext.W5	16.05.2013	Representation to Regional Assistant Commissioner
Ext.W6	20.05.2013	Letter for praying subsistence allowance
Ext.W7	30.05.2013	Show Cause Notice issued by LPG Packed Cylinders Transporters
Ext.W8	31.05.2013	Representation for praying to cancel the dismissal order.
Ext.W9	01.07.2013	Dismissal order issued by LPG Packed Cylinders Transporters
Ext.W10	15.07.2013	Representation for praying to cancel the dismissal order
Ext.W11	26.07.2013	Representation to Asstt. Labour Commissioner (Central) for conciliation
Ext.W12	01.08.2013	Letter from Asstt. Labour Commissioner (Central) for holding conciliation proceedings
Ext.W13	06.11.2013	Letter from Asstt. Labour Commissioner (Central) for holding conciliation proceedings
Ext.W14	11.12.2013	Rejoinder letter of P. Selvam before Asstt. Labour Commissioner (Central)
Ext.W15	27.12.2013	Letter from Asstt. Labour Commissioner (Central) for holding conciliation proceedings
Ext.W16	03.04.2014	Failure Report by the Asstt. Labour Commissioner (Central)
Ext.W17	26.08.2014	Notice of Government of India regarding adjudication

On the Management's side

Ex.No.	Date	Description
Ext.M1	12.08.2012	Memorandum of Settlement under Section 12(3) of the ID Act 1947
Ex.M2	01.09.2012 31.08.2015	List of Contractors for whom contract has been given for Transporting Packed LPG Cylinders for 01.09.2012 to 31.08.2015
Ext.M3	29.08.2012	Authorization given by contractors for transportation of packed LPG Cylinders-ex-Pondy-BP to Mr. M. Ramani of Akila Roadlines
Ext.M4	25.03.2013	Email-(I) from A. Mahesh Venkat to N.R. Ganesh –Stoppage of Plant by Contract Labours – Selvam and Subramaniam
Ext.M5	25.03.2013	Email-(II) from Shankar to M. Ramani regarding stoppage of work by Contract Labours and misbehavior of Subramani and Selvam (Petitioner) with plant officials
Ext.M6	25.03.2013	Reply-(III) by M. ramani – contractors A/R to Shankar & Ravi – AB – Informing Suspending of Mr. Subramani & Mr. Selvam (Petitioner) alongwith attachment letter
Ext.M6A	25.03.2013	Suspension letter sent by 2 nd Respondent to Petitioner through RPAD
Ext.M6B	26.03.2013	Letter sent by 1 st Respondent to 2 nd Respondent
Ext.M7	08.05.2013	Letter given by the Petitioner to 2 nd Respondent
Ext.M8	15.05.2013	Letter sent by Respondent to Petitioner

Ext.M9	30.05.2013	Letter sent by 2 nd Respondent to Petitioner
Ext.M10	07.06.2013	Enquiry Proceedings conducted by Office of 2 nd Respondent
Ext.M11	01.07.2013	Termination order issued by the 2 nd Respondent to Petitioner
Ext.M12	01.08.2013	Letter sent by Assistant Commissioner of Labour to 2 nd Respondent
Ext.M13	03.04.2014	Failure report given by the Assistant Commissioner of Labour
Ext.M14	13.05.1993	Certificate of Registration – Form II – Regn.No. R.II – 7 – 93 u/r the Contract Labour (Regulation and Abolition) Act – issued to IOCL Bottling Plant – Oddiyampet
Ext.M15	18.01.2013	Reply to ALC (C) – Puducherry to IOCL – u/r Reference No. 46(38)/1993-II/D3/PDY – Grant of Certificate of Registration enclosing details of contractors etc. u/r. Ref. PDY/PPG/License dated 22.11.2012
Ext.M16	25.03.2013	Letter given by Petitioner/2 nd Respondent to M. Subramanian for suspension alongwith English Translation
Ext.M17	30.05.2013	Letter given by Petitioner/2 nd Respondent to M. Subramanian to attend the enquiry to be held on 07.06.2013 alongwith English Translation
Ext.M18	01.07.2013	Letter given by Petitioner/2 nd Respondent to M. Subramanian for termination alongwith English Translation
Ext.M19	30.12.2014	Letter given by Subramani for tendering apology to petitioner/2 nd Respondent alongwith with covering letter alongwith English Translation
Ext.M20	02.01.2015	Letter given by Petitioner/2 nd Respondent to IOCL
Ext.M21	20.11.2012	Letter given to Mr. Subramani by the 2 nd Respondent
Ext.M22	07.12.2012	Reply letter given by Subramani to 2 nd Respondent
Ext.M23	-	My letter sent to Subramani alongwith translation
Ext.M24	02.01.2015	Letter sent by 2 nd Respondent to 1 st Respondent

नई दिल्ली, 7 अप्रैल, 2017

का.आ. 921.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ संख्या 91/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-30011/13/2005-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 7th April, 2017

S.O. 921.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 91/2005) of the Central Government Industrial Tribunal/Labour Court-2, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. ONGC Ltd. and others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-30011/13/2005-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO.CGIT-2/91 of 2005

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

- 1) M/S. O.N.G.C. LTD.
- 2) M/S. GREENLAND DEVELOPERS
- 3) M/S. NAVNATH ENTERPRISES

The General Manager
M/s. Oil & Natural Gas Corporation Ltd.
Vasundhara Bhavan
Bandra (E)
Mumbai 400 051.

M/s. Greenland Developers
C-103, Shriram Apartments
Anand Nagar, Taluka Uran
Distt. Raigad.

M/s. Navnath Enterprises
Above Pallavi Hospital
Taluka Uran
Distt. Raigad.

AND

THEIR WORKMEN.

The General Secretary
General Employees Association
Tel Rasayan Bhavan
Tilak Road, Dadar
Mumbai-400 014.

APPEARANCES:

FOR THE MANAGEMENT No.1	:	Mr. G.D. Talreja, Advocate.
FOR THE MANAGEMENT NO.2	:	No appearance.
FOR THE MANAGEMENT NO.3	:	No appearance.
FOR THE UNION	:	Mrs. Ranjana J. Todankar, Advocate & Mr. D.N. Vidhate, Rep.

Mumbai, dated the 3rd February 2017.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-30011/13/2005-IR (M), dated 05.07.2005 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the industrial dispute raised by general Employees Association against the management of ONGC on regularization and permanency of 24 gardeners justified? If so, to what privileges and back wages are they entitled for ?”

List of workmen

1. Mr. Bharat Bhaskar Thali
2. Ms. Manorama Sadashiv Bhoir
3. Ms. Charulata D. Mhatre
4. Ms Manisha Gajanan Mali
5. Ms. Jagruti Prabhakar Naik
6. Ms. Pratiksha K. Mhatre
7. Ms. Smita Shririn Naik

8. *Mr. Harshad Kamlakar Mhatre*
9. *Mr. Sanjay Narayan Patil*
10. *Mr. Nityanand B. Patil*
11. *Mr. Dattatray K. Patil*
12. *Mr. Sachin Narendra Patil*
13. *Mr. Mahesh Damu Bhombale*
14. *Mr. Vinaya Balkrishna Gharat*
15. *Mr. Bhai Chandra N. Patil*
16. *Mr. Rajendra Kashinath Patil*
17. *Mr. Vikas Maruti Kadu*
18. *Mr. Mangesh Jayram Thali*
19. *Mr. Rahul Purushottam Patil*
20. *Mr. Rupesh Ramesh Mhatre*
21. *Mr. Sanjay Tatyaji Shende*
22. *Mr. Dhanaji Masnaji Mokal*
23. *Mr. Narayan B. Mhatre*
24. *Mr. Shekhar Jagannath Thakur.*

2. After receipt of the reference, both parties were served with notice of the Reference. The second party union appeared through its legal representative and filed Statement of Claim at Ex-7. M/s. Greenland Developers and M/s. Navnath Enterprises were impleaded as First party Management no.2 & 3 in this reference. First party Management no.1, 2 & 3 resisted the statement of claim of second party by filing their written statements at Ex-32, Ex-28 & Ex-29 respectively. Issues were framed by my Ld. Predecessors at Ex-30. Matter was fixed for hearing on Interim relief application filed by Union.

3. Meanwhile on the request of Union, matter was kept in the Lokadalat. Second party Union filed purshis alongwith Settlement-cum-declaration at Ex-50 stating that the 23 workmen mentioned in the annexure to Order of Reference have arrived at amicable settlement and prayed to dispose of the Reference. Vide Ex-51, in respect of one workman Shri Rahul Purushotam Patil at Sr. no.19, Union informed that he left the job by accepting the Goodwill package (VRS) which was offered to the contract workmen as per the settlement offered by ONGC in the year 2006. Accordingly, vide Ex-52, matter was placed before this Tribunal for orders. Hence the order:

ORDER

Vide Ex-52, the dispute is settled in Lokadalat dated 03/02/2017. Hence Reference stands dismissed.

Date: 03.02.2017

M. V. DESHPANDE, Presiding Officer

Ex-52

PROCEEDINGS BEFORE THE LOK ADALAT HELD ON 3rd FEBRUARY 2017

Panel Members:-

1. Mr. M.B. Anchan, Adv
2. Ms. Kunda Samant, Adv
3. Mr. V. Narayanan, Adv

Ref.No. CGIT-2/91 OF 2005

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

O.N.G. C. LTD. & 2 ORS.

AND
THEIR WORKMEN

Present:

For the Management : Mr. G.D . Talreja, Rep.

For the Workmen/ 2nd party : Mr. D. N. Vidhate, Rep.

In view of the settlement of parties separately filed and union withdrawing the above reference matter stands settled.

Sd/-
(G.D. Talreja)
Representative
For first party Mgm.

Sd/-
(D.N. Vidhate)
Representative of Second party

Seen
Sd/-
(M.V. Deshpande)
PO,CGIT-2, Mumbai.

Sd/-
(V. Narayanan)
Panel Member

Sd/-
(K. N. Samant)
Panel Member

Sd/-
(M.B. Anchan)
Panel Member

नई दिल्ली, 7 अप्रैल, 2017

का.आ. 922.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स दिल्ली इंटरनेशनल एयरपोर्ट प्रा. लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 67/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-11012/7/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 7th April, 2017

S.O. 922.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 67/2016) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Delhi International Airport Pvt. Ltd. and others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-11012/7/2014-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

**BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI-110032.**

ID. No. 67/2016

Sh. Sumit Kumar S/o Sh. Satender Singh,
C/o Airport Employees Union,
BTR Bhawan , 13 A, Rouse Avenue,
New Delhi.

Versus

1. The Chairman,
M/s. Delhi International Airport Pvt, Ltd.,
New Udaan Bhawan, IGI Airport,
New Delhi.-110037.
2. The Manager,
Keppal Brady Services Pvt. Ltd.
LB-17, New Delhi House,
27, Barakhamba Road,
New Delhi.
3. The Manager,
Brady Services Pvt. Ltd.,
LB-17, New Delhi House,
27, Barakhamba Road,
New Delhi-110001.

AWARD

On 11.08.2016 Labour Ministry of Government of India made reference No. L-11012/7/2014 –IR(M) to this Tribunal for adjudication :

“Whether termination of services of Sh. Sunil Kumar S/o Sh. Satender Singh by the management M/s. Brady Services Pvt. Ltd. w.e.f. 16.12.2014 is just, fair and legal? If not , what relief the workman concerned is entitled to?”

Aforesaid reference has been received in the office of this Tribunal. Which was been registered as ID. No. 67/2016.

Notice to workman /respondent was issued to file claim statement /response to reference fixing 16.09.2016.

None turn up on 16.09.2016 as advocates were on strike. Hence case was adjourned to 21.10.2016 for filing of claim statement.

On 21.10.2016 workman in person and Sh. Vipin Malik Manager (H.R) came and informed that settlement is in progress. Hence I fixed 9.11.2016 for filing of settlement report on 2.1.2017 certain photocopies including cheque have been filed on behalf of management to show that settlement with workman took place outside court and cheque of Rs. 15328/- has been handed over to workman against his full and final payment in-compliance of settlement.

Photocopy of cheque and other photo copies filed by management are introduced on record.

Claim of workman /claimant appears to have been satisfied due to which workman /claimant is not turning up.

Award is accordingly passed.

Dated:-22.2.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 7 अप्रैल, 2017

का.आ. 923.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स विशाखापतनम डॉक लेबर बोर्ड/कार्गो हैंडलिंग डिविजन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 9/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-34011/1/1999-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 7th April, 2017

S.O. 923.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/2008) of the Central Government Industrial Tribunal/Labour Court, Hyderabad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Visakhapatnam Dock Labour Board/Cargo Handling Division and their workman, which was received by the Central Government on 03.04.2017.

[No. L-34011/1/1999-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present :** Sri Muralidhar Pradhan, Presiding OfficerDated the 16th day of February, 2017**INDUSTRIAL DISPUTE No. 9/2008****(Old ITID (C) No. 13/1999, transferred from Industrial Tribunal-cum-Labour Court, Visakhapatnam)****Between:**

Sl. No	Name of the Petitioner S/Sri	Father's name	Post held
1	Dantuluri Venkata Suryanarayana Raju	Dantuluri Banagara Raju	Lift Operator
2	Penumatsa Venkata Suryanarayana Raju	P. Janaki Rama Raju	Lift Operator
3	Senapathi Kanaka Rao	S. Bheemu Naidu	Gardener
4	Dindu Mohan Rao	D Pullaiah	Khalasi
5	Raparthi Atchi Babu	Late R. Simhachalam	Khalasi
6	Karri Bhaskara Rao	Late K. Pydi Chitty	Khalasi
7	Gunnabathula Ananda Rao	G.Narasimha Rao	Khalasi
8	Gandeti Satyanaryana Murthy	G. Chinnayya	Khalasi
9	Ummidi Ramu	U. Masenu	Gardener
10	Chikkala Thata Rao	Ch. Simhadri	Messenger
11	Gantipilli Korlayya	Late G. Marayya	Games Boy
12	Peethla Naga Raju	Late P. Chinna Kannayya	Messenger
13	Dulipala Sudhakar	Late D.V.K. Sastry	Record Sorter
14	Chodipalli Kodanda Rao	Ch Appanna	Ward Boy
15	Ummidi Chanti	U. Nallayya	Ward Boy
16	Yerra Balaram	Y. Sriramulu	Ward Boy
17	Moogi Srinivasa Rao	M. Nooka Raju	Ward Watchman
18	Kolli Venkata Ramana	Late K. Venkata Ramana	Messenger
19	Meesala Raju	Late M. Yellu Swamy	Sanitary Khalasi
20	Devpalli Rajasekhar	D. Ananda Rao	Sanitary Khalasi
21	Nammi Appala Raju	N. Appa Rao	Sanitary Khalasi
22	Somadhulu Suri Babu	Late S. So,ulu	Sanitary Khalasi
23	Poliminti Srinu	P. Pothu Raju	Sanitary Khalasi
24	Koppala Chandra Sekhar	Late K. Ganga Raju	Jr. College Watchman

25	Gurugubilli Bharat Rao	Late G. Kalidas	Jr. College Watchman
26	Gottivada Venkata Ramana	Late G./ Maridayya	Jr. College Gardener
27	Eluri Srinivasa Rao	E. VEnkata Rao	Jr. College Watchman
28	Mohmud Khadir Baba	Late M. Khadar	Jr. College Gardener
29	V. Jayanthi Rao	V. Viswanadham	Casual Gardener

C/o Cargo Handling Division,
Traffic Department,
Visakhapatnam Port Trust,
Visakhapatnam-35.

(The above 1 to 28 workmen are substituted as Petitioners in place of M/s. Visakhapatnam Dock Labour Board and Dock Workers' Union etc. as per orders dated 9.2.2009 passed in I.A. dated 19.1.2009 and the 29th workman is added as per order dated 5.3.2009 passed in I.A. dated 25.2.2009)

..... Petitioners

AND

The Traffic Manager,
Cargo Handling Division,
Traffic Department,
Visakhapatnam Port Trust,
Visakhapatnam-35.

(Substituted for Deputy Chairman, Visakhapatnam Dock Labour Board etc. as per orders dated 9.2.2009 passed in I.A. dated 19.1.2009)

.....Respondent

Appearances:

- For the Petitioner : 1. Sri Vedula Srinivas, Advocate for Petitioners No. 1, 6, 11, 13, 14, 15, 18 to 28 & 29
2. M/s. P. Naveen Rao & K. Phaniraj, Advocates for Petitioner Nos. 2, 3, 4, 5, 7, 8, 9, 12, 16 & 17
3. Sri Venkat, Advocate for Petitioner No.10
- For the Respondent : M/s. V. Umadevi & M.V.L. Narasaiah, Advocates

AWARD

The Government of India, Ministry of Labour by its order No. L-34011/1/99-IR(Misc) dated 10.5.1999 referred the dispute under section 10(1)(d) of the I.D. Act, 1947, between the management of Visakhapatnam Dock Labour Board, Visakhapatnam and its workmen way back in May, 1999 and the said reference was numbered as ITID (C) No.13/1999 by the Court of Industrial Tribunal-cum-Labour Court, Visakhapatnam.

2. After hearing both the parties the Industrial Tribunal-cum-Labour Court, Visakhapatnam passed an award on 16.4.2001 in ITID(C) No.13/1999. Being aggrieved by the above Award, the management and some workmen preferred W.P.s No.14413/2001 & 16022/2001 and 14413/2001, which were allowed on 1.8.2007 and on 7.4.2005 respectively and the Hon'ble High Court of A.P., & Telengana remanded the matter back to the said court of Visakhapatnam. In the mean time the Court of Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Hyderabad was established. Therefore, the Industrial Tribunal-cum-Labour Court, Visakhapatnam wrote a letter to the Ministry of Labour and Employment, New Delhi for adjudication of the dispute by this Central Government Industrial Tribunal cum Labour Court, Hyderabad.

3. In turn, the Ministry of Labour and Employment vide its letter No. L-34011/1/99-IR(Misc) dated 26.12.2007 referred the matter to this Tribunal with a direction to proceed with the proceedings from the stage at which it is transferred to this Tribunal and dispose off the same according to Law. After making necessary correspondence with the Court of Industrial Tribunal-cum-Labour Court, Visakhapatnam, ITID(C) No.13/1999 was transferred to this Tribunal and the same was received by post and numbered as ID No.9/2008. The reference is,

SCHEDULE

“Whether the action of the management of Visakhapatnam Dock Labour Board in not regularising the services of 36 casual workers (as per list enclosed) though they are working since 1992 with Dock Labour Board, Visakhapatnam is justified? If not, to what relief the concerned workmen are entitled to?”

Notices were issued to both the workmen and the management. They both appeared before the court and engaged their respective counsels with the leave of the court and consent of either party.

4. **The averments made in the claim statement in brief are as follows:**

The Petitioners filed the neat copy of the claim statement in view of the order passed in the I.A.s which were allowed by this Tribunal. The old ITID (C) No.13/1999 was initially raised by the General Secretary Visakhapatnam Dock Labour Board and Dock Workers Union representing 36 casual workmen of Visakhapatnam Dock Labour Board. During the pendency of the writ petitions before the Hon'ble High Court of A.P., the said union has withdrawn their representation and vide a common order dated 28.8.2007 in WPMP No.19377/2007, workmen Nos. 1 to 28 have been substituted as Petitioners in the said writ petitions and the Hon'ble Court remanded the said I.D. to this Tribunal for fresh disposal. The Hon'ble High Court by order dated 1.12.2008 in WP No.26141/2008 directed that the 29th workman shall be impleaded as such. Moreover, the then Respondent the Dock Labour Board has been merged with the Traffic Department of Visakhapatnam Port Trust as a Division by name Cargo Handling Division headed by the Traffic Manager. So the cause title and paras I and II of the claim statement dated 26.7.1999 are amended accordingly as per the order dated 9.2.2009 passed in the I.A. dated 19.1.2009 and order dated 5.3.2009 passed in the I.A. dated 25.2.2009.

5. It is stated that the Dock Labour Board is running a hospital, engineering unit, lift at its administrative office building and a junior college for the benefit of its employees and that about 36 workmen are working on casual or daily wage basis from 1992 to 1993 and 1994 in these four divisions mentioned above and that they were given training. They were appointed and have been serving continuously for more than 240 days in an year. The workmen have put in long length of service and their work is perennial in nature and their services are to be regularised. The workmen raised a dispute for their regularization before the Assistant Labour Commissioner (C), Visakhapatnam and the conciliation proceedings were drawn on 23.12.1990 and the representatives of the workers union as well as the management have signed therein. The Petitioners also submitted that the management has to regularise the services of the Petitioner workmen and pay the wages and other allowances on par with the regular employees of the Dock Labour Board.

6. **Respondent filed counter with the averments in brief which runs as follows:**

The Respondent management is a statutory body controlled by the Ministry of Surface Transport and the Government of India and it is maintaining hospital, lift system in the house of office staff, workers and the Visakhapatnam Dock Labour Board is also running a junior college at Kailasapuram Housing Colony. But it is false to allege that 30 workers have been employed on casual basis or daily or monthly rate basis in the year 1992, 1993 and 1994 and they were given training and they are being appointed and under the direct administration and disciplinary control of the Respondent and working continuously for more than 240 days in an year and their work is perennial in nature. The allegation that the Respondent is supervising them and taking their attendance etc., is also incorrect. It is stated that 31 casual workers were working on daily rate wages in the Respondent organization and the remaining three employees from serial Nos. 32 to 36 are working in Visakhapatnam Dock Labour Board Junior college which is established in the year 1997 by the Visakhapatnam Dock Labour Board Educational Society in terms of Societies Registration Act and Rules and they were appointed by Dock Labour Educational Society in December, 1992 and now they are in the pay scale of Rs.1300-40-1980 with DA, HRA, CCA and other allowances. No training was provided to the workmen as mentioned in the claim statement. They are working as Sanitary Khalasis Gardeners, Ward Boys, Khalasis and lift operators and they never worked for 240 days in an year and they are only working on daily rated basis and on casual basis. They are not appointed against the permanent vacancy sanctioned by the Government. They are not being trained as per the W.R.C. recommendations which are applicable to the Port and Dock Employees Workers. The Visakhapatnam Dock Labour Board is maintaining sanctioned strength from Class-I to Class IV posts as directed by the Government and as such, these 31 casual posts were not covered under the STV report. It is not possible to regularise the services of the workmen as no such casual worker's posts are existing. All sanctioned posts are in direct recruitment quota and their vacancies are being filled up as per recruitment rules by giving paper notification and through Employment Exchange. The promotions are being given for permanent posts as per their respective recruitment rules. Preference is being given to the sons, wives, unmarried daughters of the deceased while in service, and medically invalidated workers/employees. It is also stated that the workmen herein are not sponsored by the Employment Exchange and were not appointed regularly as per the recruitment procedure in vogue against the sanctioned posts. Hence, the reference is to be answered in favour of the management.

7. On behalf of the workmen, WW1 to WW3 have been examined and Ex.W1 to W33 have been marked. On behalf of the Respondent management MW1 has been examined and Ex.M1 to M6 have been marked.

8. **The points that arise for consideration are:**

- I. Whether the action of the Traffic Manager/Management of Visakhapatnam Dock Labour Board in not regularising the services of the 29 (36) casual workers (as per cause title) though they are working since 1992 with Dock Labour Board, Visakhapatnam is justified?
- II. If not, to what relief the concerned workmen are entitled to?

9. I have already heard the Learned Counsels appearing on behalf of the parties and also gone through the written notes of submission filed by the parties.

10. **Point No.I:** At the outset the Learned Counsel for Petitioners No. 1,6,11,13,14,15,18 to 29 has drawn the attention of the Tribunal stating the background of the case. As per his contention the present Petitioners along with others 36 in number were appointed by the Respondent i.e., Visakhapatnam Dock Labour Board in short the V.D.L.B., from the year 1992 to 1996 on consolidated pay(daily wage basis) in four divisions of the V.D.L.B.. Even though the Petitioners were working regularly against the permanent posts they were not regularised. There after one industrial dispute bearing number ITID (C) 13/1999 was raised between the Dock Labour Board and Dock Workers Union before the Assistant Labour Commissioner(C), Visakhapatnam in the year 1997 to regularise the 36 workers with full pay on par with the regular employees of the Board. The matter was contested by the Board, with the plea that as the casuals have not been appointed against sanctioned posts, following the approved procedure they were not regularised. The conciliation proceeding was held between the management and the workers union and lastly it was ended in failure. Thereafter, the matter was referred by the Government of India (Ministry of Labour and Employment) to the Chairman, Industrial Tribunal cum Labour Court, Visakhapatnam vide order dated 10.5.1999 for arbitration with specific reference ("Whether the action of the management of Visakhapatnam Dock Labour Board in not regularising the services of 36 casual workers though they are working since 1992 with Dock Labour Board, Visakhapatnam is justified? If not, to what relief the concerned workmen are entitled to?" after hearing both the parties the Industrial Tribunal cum Labour Court, Visakhapatnam passed one 'Nil' award on 16.4.2001 with a direction to the management for grant of equal pay for equal work on par with the similarly placed regular employees of the same cadre in the management with effect from the date of notification of the award. As the management did not pay equal pay to the workers a prosecution was launched against the Respondents. Then being aggrieved by the said action and on receiving the prosecution notice dated 10.9.2001, from the Assistant Labour Commissioner (C), Visakhapatnam for non-implementation of the above award, the Visakhapatnam Dock Labour Board filed one writ petition bearing No.14413/2001 in the Hon'ble High Court of A.P., Hyderabad on the issue regarding grant of equal pay for equal work on par with the similarly placed regular employees of the same cadre with effect from the date of notification of the award. But, ultimately the matter was stayed by the Hon'ble High Court of A.P., Hyderabad. The Hon'ble High court after hearing, modified the interim order dated 25.9.2001 with a direction to pay 50% of the pay of the regular wages to the Petitioners. Pursuant to the order of the Hon'ble High Court 50% pay of the regular wages was paid to the casuals covered in the above writ with effect from 16.10.2001 except Sri Ch. Tata Rao, and he was allowed to draw his existing salary in pre-revised scale which is more than 50% of the pay as he was appointed on a regular scale of pay. It is further contended that the Visakhapatnam Dock Labour Board and Dock Workers union also filed WP No. 16022/2001 in the Hon'ble High Court of A.P., Hyderabad challenging the award dated 16.4.2001 to the extent of denial of benefit of regularization of the services of the workmen. Subsequently the VDLB & DW union vide letter dated 12.7.2007 addressed their standing counsel to withdraw WP No.16022/2001 serving a copy to the Chairman, VDLB. Consequent on this, 28 casuals have filed WPMP No.19377/2007 in WP No.16022/2001 praying the Hon'ble Court to pass orders substituting the Petitioners herein as Petitioners of WP No.16022/2001 in place of VDLB & DW Union represented by its General Secretary Shri S. Parasuram. Finally both the writ petitions were disposed off vide a common orders dated 1.8.2007 remanding back the matter to the Labour Court. In the common orders the Hon'ble Court vide orders dated 28.8.2007 has accepted the prayer of the casuals made in WPMP No.19377/2007 in WP No.16022/2001 and WPMP 19378/2007 in WP No.14413/2001 respectively. The Board vide its Resolution No.23/2007 resolved to implement the common order dated 1.8.2007 passed by the Hon'ble High Court in WP No.14413/2001 filed by VDLB and WP No.16022/2001 filed by the casuals. Thereafter legal opinion was obtained from the standing counsel for payment of 50% wages to the Petitioners as no order was passed by the Hon'ble High Court to that effect, but the Standing Counsel submitted a negative opinion, advising not to give 50% wages, but the Respondent management considering the plight of the workers, so also the style of their work in the Respondent's management passed order vide resolution No. 30 of 2007 maintaining the status quo with regard to payment of salaries to the casual employees working in various divisions in the Visakhapatnam Dock Labour Board and since that date the Petitioners were getting 50% of salary. They are also getting the benefit of PF deduction, medical facilities, house rent allowance, allotment of quarters in their favour and enhancement of DA from time to time along with the pay.

Their pay has been revised from time to time, but due to pending disposal of the case before this court, the Board is unable to regularise, the Petitioners in permanent cadre.

11. The Petitioners also submitted that admittedly the Petitioners have been appointed as casual temporary workers in the erstwhile Visakhapatnam Dock Labour Board during the year 1992, 1994-96 which was subsequently merged in the Visakhapatnam Port Trust and they are being continuing in the same casual status till date. All these workers have been appointed on consolidated wages, some of them on daily wages basis and a few of them on regular time scale of pay. It is further submitted that the Petitioners have attended their duties regularly and their attendance are being marked. They have been working in the office, engineering section, welfare section, hospital, high school and junior college and doing horticulture work attached to the organization. All these are permanent and perennial establishments, wherein the Petitioners were being engaged continuously for more than 20 years till date. It is also admitted that all the Petitioners have been provided with medical facilities, residential quarters and cooperative loans. 50% of wages given to the Petitioners have been revised under the pay revisions time to time and PF contributions have been collected from them and they are subjected to proofs for disciplinary procedure. The duties and works performed by the Petitioners are permanent in nature. It is also submitted that inspite of the above factual aspects the Petitioners are denied regularization of their service and they are being exploited by paying only 50% of the wages payable to the regular and permanent employees which is a clear and deliberate unfair labour practice on the part of the management.

12. Thus, on the other hand the Respondent denying the regularization of the Petitioners service has stated that the Petitioners have not been appointed by the competent authorities against the permanent vacancies. They have also not undergone any training and they have not even completed 240 musters in a year and the Petitioners have not been sponsored by Employment Exchange and not appointed regularly as per the recruitment rules in vogue.

13. In view of the fore going background of the case it is to be considered whether the action of the Traffic Manager of Visakhapatnam Dock Labour Board in not regularising the services of 29 (36) casual workers (as per list enclosed) though they are working since 1992 with the Dock Labour Board, Visakhapatnam is justified?—as reflected in Point No.I. In order to substantiate their claim the Petitioner have relied on the oral evidence of WW1 to WW3. WW1 being the Petitioner No.1, in his evidence has stated that he was appointed by the management on 1.7.1992 as NMR and posted as a Lift Operator vide order No. E/NMRS/93/283, dated 21.5.1993 vide Ex.W1 and since that date he is continuing there till date. He stated that operation of lift is a perpetual job but he is continuing there as casual. He has also stated that since 21.5.1993 he is working there and during the period of his service he was not given any leave. He was paid wages at much less than the permanent lift operators of Visakhapatnam Port Trust. He has been provided with medical facilities. He further stated that even if he is doing the work of permanent nature, he has not been provided with equal pay on par with the permanent employees of Visakhapatnam Port Trust and the above said acts of the management amounts to unfair labour practice. He has stated to regularise his service and to pay equal salary on par with the regular employees of Visakhapatnam Port Trust. In his cross examination he has admitted that he has not been appointed through Employment Exchange but he has been appointed by the Deputy Chairman of the Respondent management. He further admitted that he applied to the management and the management appointed him. He denied the suggestion of the Respondent management to the effect that his appointment is illegal and he is not entitled for regularization. The evidence of WW1 clearly indicates that since 1992 he has been appointed as NMR and since the date of his appointment i.e., 21.5.1993 he is working in the job of a permanent employee. But he has not been given wages on par with the permanent employees of Visakhapatnam Port Trust even though his work is similar to the permanent employees of Visakhapatnam Port Trust.

14. WW2 being Petitioner No.15 in his evidence stated that he was appointed in the medical division of Visakhapatnam Dock Labour Board as Casual Ward Boy with effect from 1.11.1993 vide order No.E1/Cas/93/1517, dated 24.11.1993. After having the above order he was provided pre-entry training as ward-boy at GJH of Visakhapatnam Port Trust from July, 1993 and since the date of the above order of appointment he is continuing there. He is working as a Dresser in Visakhapatnam Dock Labour Board hospital since 2002. He has filed the duty rosters of dressers of the month of September, 2002 and December, 2008. He stated that as a dresser he used to perform all the duties of a permanent dresser like putting tractions, PoPs and cleaning and dressing of injuries of patients. All the above duties and functions are permanent and perpetual in nature. He is working all the shifts at different places. He also stated that in view of the important services rendered by him, he ought to have been regularised since long. But continuing him as a casual ward boy since last 20 years is unfair and unjustified and a clear case of unfair labour practice. He has proved the appointment orders of all the Petitioners vide Exs.W5 to W33. He also proved his appointment order dated 24.11.1993 as Ex.W2. He proved his duty rosters dated 29.8.2002 and 26.11.2008 as Exs.W3 and W4. In his cross examination, he admitted that he has not been appointed through Employment Exchange. He further admitted that no interview has been conducted for his appointment nor he has appeared any written examination. He also admitted that he is getting salary through bank, and other persons are also getting salary through bank and they were getting salary on daily wage basis. He clearly admitted that some of the Petitioners were interviewed and were appointed. The evidence of WW2 clearly indicates that he has been appointed as casual ward

boy after getting the training. But even though his nature of work is on par with the regular employees of Visakhapatnam Port Trust he is not getting salary on par with the regular employees.

15. WW3 being Petitioner No.10 of this case deposed on oath that initially he was appointed as a Peon/Messenger on adhoc basis in Dock Labour Board vide order Np.E.1/R/93/412 dated 21.6.1993 issued by the Deputy Chairman of Dock Labour Board, Visakhapatnam on the scale of pay of Rs.1040-1425 with effect from 1.7.1993 and since the date of appointment he is working as Peon/Messenger without any break. He is also getting casual leave facility and medical facilities. He is also getting salary on monthly basis. He stated that he has been given regular salary, pay which is applicable to the post of Peon/Messenger on a periodically revised scale and he was given bonus till 1996. But he was not given increments though he was entitled, for the services rendered by him. He stated that increments are liable to be paid to each employee unless withheld by way of disciplinary punishments. He also stated that, he has made representation to the Respondents for regularization of his services and to pay equal salary to him on par with the permanent peon/messenger of Visakhapatnam Port Trust, but it was not considered. In his cross examination he admitted that he has been appointed on regular salary basis for the post of Peon/messenger. He admitted that he has not been appointed through Employment Exchange and further admitted that he has applied for the post and he was selected. He denied the suggestion of the Respondent management to the effect that he was illegally appointed and he is not entitled for regularization. The evidence of WW3 clearly goes to show that he has been appointed against a regular vacancy and getting salary on monthly basis. But he has not been regularised yet even though he has been working in the same post from 1993 on par with the regular employees of the Respondent/management.

16. On the other hand, MW1 being an Assistant Secretary of the Respondent organization stated that the Respondent organization has got full fledged hospital to facilitate medical facilities to all the workmen, their eligible family members, and also it has got an Engineering Unit. There is lift for use of the office staff and workers, and also having one Junior College at Kailasapuram Housing Colony. He denied the appointment of the Petitioners since 1992, 1993, 1994 and their working period of 240 days in a year. He stated that the Petitioner have not been appointed against permanent vacancies. He also stated that these Petitioners have not been sponsored by the Employment Exchange, and they have not been appointed through any recruitment procedure in vogue against the sanctioned posts. He further stated that one Mr. R. Sudhakar Deputy Chairman in the Dock Labour Board who appointed the Petitioners have faced an enquiry, and was dismissed from service. He clearly stated that it is not possible to regularise the Petitioners into regular posts. He stated that the Petitioners are working whenever they were required in absence of the permanent employees. The nature of work done by the Petitioners is for hourly basis only and they can not compare the nature of work performed by them along with the permanent workers. He has proved the copy of the report of the staff inspection unit on the staffing study of the DIB, Visakhapatnam, Ministry of Surface Transport, the memorandum of charges framed against Mr. R. Sudhakar, copy of the letter dated 8.9.1989 of the Ministry of Surface Transport regarding implementation of SIU report, Visakhapatnam Dock Labour Board (Staff Recruitment & Condition of service) Rules 1970, affidavit filed by the Respondent in WP No.14413/2001, and the settlement of wage revision, retirement benefits and conditions of service of port and dock workers at major ports with effect from 1.1.1997 which have been marked as Ex.M1 to M6 respectively. In his cross examination, he admitted that 24 members of the Petitioner union have been given 50% of pay on par with the regular employees of the Respondent management in view of the direction of the Hon'ble High Court of A.P.. He further admitted that Petitioner No.10 is getting Rs.7800/- as salary due to enhancement of DA but he has not been given arrears of pay. He also admitted that the Petitioners have worked during the period from 1993 till date and the Department is maintaining attendance registers for the employees. He further admitted that the Petitioners used to come and attend their duty, their attendance is marked and on the date they are present, they will be paid wages. He admitted that the wages are being paid to the Petitioners on the basis of the days they worked in the organization. He also admitted that they are paid 50% of basic and 50% of DA. He further admitted that they are paid HRA on the basis of pay and the Petitioners are being provided with medical facilities. He clearly admitted that the Petitioners are engaged in the hospital, lift, colleges, engineering sections etc.. and they were transferred from one Department to other Departments. He admitted that the benefit of pay revision was given to the Petitioner under the direction of the Hon'ble High Court of A.P.. He also admitted that most of the Petitioners have been allotted organization quarters and PF is being deducted from their wages and the Petitioners have been granted cooperative society loan as per their request. He also admitted that action are being taken against the Petitioners on their committing any misconduct as per the rules prevailed in the management organization. He clearly admitted that duties and works performed by the Petitioners are permanent in nature, but they were not appointed against the sanctioned posts. He denied the suggestion of the Petitioners to the effect that the management is continuing the Petitioners on casual basis with a view to deny the benefits of regular employees. The evidence of MW1 clearly indicates that the Petitioners are working under the Respondent as like as the permanent employees of Port Trust but they are not given regular status of a permanent employees and not given regular pay scale.

17. On consideration of the evidence adduced on behalf of the parties, it is clearly evident that Dock Labour Board of Visakhapatnam is running a hospital, engineering unit, lift for its administrative office and one junior college. The

present Petitioners along with others are working there from the year 1992, 1993, 1994 and since the time of joining some of the Petitioners have been given training for whom training is necessary. The Petitioners have given appointment orders and are working continuously for more than 240 days in a year, and the work of the Petitioners are permanent in nature, but even though they are working against regular employees of the Respondents' management, they are not being paid regular pay. The Petitioners are getting only 50% of pay as per the revised pay even though they are working on par with the regular employees of the Respondent management. The attendance of the Petitioners are being marked. The Petitioners are subject to disciplinary punishments like the permanent employees of the Respondent management. there is no difference of work style between the Petitioners and the regular employees of the Respondent except regularization of service and payment of wages.

18. The Respondent has mainly challenged to the plea of the Petitioners stating that the Petitioners are not appointed by the competent authorities, they have not been appointed against any permanent vacancies, they had not been sent to undergo any training. The Petitioners are not having completed 240 days of musters in a year and they were not sponsored by the Employment Exchange and not appointed regularly as per the recruitment process in vogue. The counsel for the Petitioners have contended that all the above said plea has been admitted by MW1 in his cross examination which needs no proof.

19. In fact, the Petitioners have proved their appointment orders vide Exs.W5 to W33. On perusal of all the appointment letters it clearly go to show that the Petitioners have got their appointment in the years 1992, 1993 and 1994. The appointment orders have been signed by the then Secretary and he Assistant Secretary who are the immediate subordinates of the Deputy Chairman (the appointing authority of Class. III and Class IV employees) in-charge of the appointment affairs. The above appointment orders have not been questioned by the Respondents as yet even after or before the dispute raised by the Petitioners for their regularization. To defeat the plea of the Respondent that the Petitioners have not been appointed against a permanent vacancy. MW1 has specifically admitted in his evidence that the works performed by the Petitioners are permanent in nature. When the works of the Petitioners are permanent in nature and they have not been removed as yet, and are continuing in their service for a period of more than 20 years, it can not be stated that they have not been entrusted to work against any permanent vacancies. The Respondent has also raised the question stating that the posts against which the Petitioners are working are not sanctioned posts. In fact no steps have been taken by the Respondent as yet to terminate the Petitioners from their service. Further more, though the Petitioners have not been appointed against any sanctioned posts, but they are working under the Respondent management continuously in the regular establishments, without any break. Moreover, though the Petitioners were never under the cover of litigious employment, the Respondent has not make any attempt to terminate their services. During the course of argument, the Learned Counsel appearing on behalf of Petitioner Nos.1,6,11,13,14,15, 18-29, drew the attention of this Tribunal relying on the decision of the Hon'ble Apex Court, decided in the case of ONGC Ltd., Vs. Petroleum Coal Labour Union and others, dated 17.4.2015, which is similar to the case of the present Petitioners. In that case, the Hon'ble Court has held that, "**the corporation has** the right under Section 33(i)(a) of the Act to seek permission from the conciliation officer/Tribunal to remove them from their services but that has not been done by it. Therefore, it would be an improper and misleading contention of the corporation to describe this scenario as litigious employment, which contention does not stand for judicial scrutiny of this Court." In this case even though the Respondent has stated that the appointment of the Petitioners are illegal, in fact no steps have been taken by the Respondent to terminate the Petitioners from service. Thus, it can not be stated that the Petitioners' appointment is illegal. The Respondent has contended that the Petitioners are not sent for any training. In fact except the post of ward boy none of the posts require training, and without undergoing any training the Petitioners have been performing their duties continuously since last more than 20 years. The Petitioners who were working in the hospital have undergone training, Exs.W2 to W4 clearly indicate that the Petitioners who are working as ward boy in the hospital have already undergone training at GJH, of Visakhapatnam Dock Labour Board. In view of the certificate filed by the Petitioners, vide Exs.W2 to W4 the Petitioners have been allowed to work. The Respondent has stated that the Petitioners have not completed 240 days in a year. MW1 in his cross examination has admitted stating that, "it is correct that they come daily and attend to their duty and their attendance is marked." This shows that the Petitioners are attending their duties regularly without any break and have worked for more than 240 days in a year. The Respondent has challenged that the Petitioners are not appointed by any competent authority and were appointed by Mr. R. Sudhakar the then Deputy Chairman, who has been removed from service. In fact, Mr. R. Sudhakar has not signed in any of the appointment letters. The Petitioners have been working in the Respondent's organization since 1992 to 1994 by virtue of the appointment orders vide Exs.W5 to W33 and have not yet been terminated by order of any authority. Further contention of the Respondent that the Petitioners have been appointed without following due procedure. In this regard, the Learned Counsel appearing on behalf of the Petitioners have challenged the above contention relying on the decision of the Apex Court decided in the case of ONGC Ltd., Vs. Petroleum Coal Labour Union & others supra) wherein it has been held that, "in the light of the above discussion and legal principles laid down by this court in the cases referred to supra, we are of the considered view that the procedure of appointments adopted by the Corporation with respect to the concerned workmen initially appointed through contractors, subsequently

through Co-operative Society, and then vide memorandum of appointment issued to each one of the concerned workmen in the year and thereafter, continuing them in their services in the posts by the Corporation without following any procedure as contended by the senior counsel on behalf of the Corporation whose contention is untenable in law and their appointment can be said as irregular but not as illegal as the same was not objected to by any Authority of the Corporation at any point of time. But their appointment in their posts and continuing them in their services is definitely can not be termed as illegal, at best it can be called irregular.” In view of the decisions cited above the Learned Counsel for the Petitioners argued that in this case the appointment of the present Petitioners can not be stated as illegal, at best it may be stated that the appointment is irregular.

20. On the other hand, the Learned Counsel for the Respondent submitted that the Petitioners can not be regularised in view of the judgement of the Apex Court decided in the case of Umadevi Vs. Secretary, State of Karnataka (2006), the land mark judgement. But, to contradict the above contention of the counsel for the Respondent, the counsel for the Petitioners referring the judgement of the Apex Court decided in the case of Hari Nandan Prasad and another Vs. Employer I/R to Management of Food Corporation of India & Anr., reported in 2014 contended that while deciding the above case the Hon’ble Apex Court has referred the case of Maharashtra State Road Transport Corporation (2009) case, and in para 25 at page 30 it is held that, “As a matter of fact, the issue like the present one pertaining to unfair labour practice was not at all referred to, considered or decided in Umadevi. Unfair labour practice on the part of the employer in engaging employees as badlis, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent employees as provided in item 6 of Schedule IV and the power of the Industrial and Labour Courts under Section 30 of the Act did not fall for adjudication or consideration before the Constitution Bench.” The Learned Counsel for the Petitioners contended that, in view of the observation of the Apex Court, the ratio of Umadevi case is not applicable in the cases of unfair labour practice like the instant case nor it placed any embargo on the powers of this Tribunal while adjudicating the same. He further contended that in para 30 at page 34 it was held that, “it also hardly needs to be emphasized the powers of the industrial adjudicator under the Industrial Disputes Act are equally wide.”

21. The Learned Counsel for the Petitioners also contended that, in this case some of the similarly situated other employees have already been regularised earlier. Three casual employees who were in this litigation earlier were regularised in permanent posts under compassionate appointment scheme. So the Petitioners’ services ought to have been considered for regularization according to the ratio of the Hon’ble Apex Court held in the case of Hari Nandan Prasad (supra) as observed in para 34, at page 37 of the judgement, “However, wherever it is found that similarly situated workmen are regularized by the employer itself under some scheme or otherwise and the workmen in question who have approached Industrial/Labour Court are at par with them, direction of regularization in such cases may be legally justified, otherwise non-regularization of the left over workers itself would amount to invidious discrimination qua them in such cases and would be violative of Art.14 of the Constitution.” The Learned Counsel further contended that in the present case the Petitioners are working on par with the regular employees of the Respondent management but they are not getting proper remuneration. They have been provided 50% of the salary only, the management is exploiting work from them, referring to Industrial Disputes Act, he contended that Industrial Disputes Act, 1947 is a comprehensive act dealing with unfair labour practices. Sub-section (ra) of Section 2 says that “unfair labour practice” means any of the practices specified in the Fifth Schedule”. Item entry 10 of Fifth Schedule says that to employ workmen as ‘badlis’, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen is an unfair labour practice. Therefore, in the instant case, non-regularization of the Petitioners is a clear violation of the Industrial Disputes Act and hence it is illegal. The act further prohibits unfair labour practice u/s.25T and also provides u/s. 25U for punishing any person committing unfair labour practices, with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or both. In the instant case the Petitioners are working years together under the Respondent as casuals. They are rendering service to the Respondent on par with the regular employees. But they are not given the status of permanent employment and they are being exploited and it is a clear case of unfair labour practice on part of the Respondent.

22. The Learned Counsel for the Petitioners referring to the case of ONGC Ltd., Vs. Petroleum Coal Union & Ors. (supra) of the Hon’ble Supreme Court contended that in the afore said case the Apex Court finally held that, “that it is undisputed fact that the workmen have been appointed on term basis vide memorandum of appointment issued to each one of the concerned workmen in the year 1988 by the Corporation who continued their services for several years. Thereafter, they were denied their legitimate right to be regularized in the permanent posts of the Corporation.held on the basis of facts and evidence on record that the same attracts entry Item No.10 of Schedule V of the Act, in employing the concerned workmen as temporary employees against permanent posts who have been doing perennial nature of work and continuing them as such for number of years. We affirm the same as it is a clear case of unfair labour practice on the part of the Corporation as defined under Section 2(ra) of the Act, which is statutorily prohibited under Section 25T of the Act and the said action of the Corporation warrants penalty to be imposed upon it under Section 25U of the Act.” Lastly the court confirmed the award passed by the Labour Court and directed to regularise

the services of the workmen. As per the contention of the Learned Counsel for the Petitioners, the case of the Petitioners is similar to that of the case of ONGC Ltd., Vs. Petroleum Coal Union and Others (Supra) and it is squarely applicable to the case of the Petitioners. In fact, in this case the Petitioners are working in the Respondent's organization years together i.e., since more than 20 years continuously on par with the regular employees of Visakhapatnam Port Trust, but they have not been given full wages and not even regularised. In the opinion of this Tribunal the action of the Respondent i.e., the Traffic Manager, is not justified and as such Point No.I is answered negatively against the Respondent.

Thus, Point No.I is answered accordingly.

23. Point No.II: In Point No.I, it has already been held that the action of the Traffic Manager, Visakhapatnam Dock Labour Board (the Respondent) in not regularising the services of the 29 casual workers, i.e., the Petitioners (as per list) though they are working since 1992 with the Dock Labour Board, Visakhapatnam is not justified. Now, it is to be considered what relief the concerned workmen i.e., the Petitioners are entitled to. In Point No.I, it has already been held that the Petitioners are working in the Respondent's management since 1992, 1993 and 1994 continuously without any break by virtue of the appointment orders vide Ex.W5 to W33 issued by the Respondent from time to time on par with the regular employees of the Visakhapatnam Port Trust. They have been given only 50% of Pay as per the pay scale revised by the Government of India from time to time. The Petitioners are getting all other benefits from the Respondent's organization like the permanent employees of the Port Trust except regularization of their service and payment of full wages. Admittedly, the Petitioners are rendering their services in the Respondent's organization on par with the permanent employees in the permanent establishments. They are also subjected to disciplinary action like that of the permanent employees of the Respondent's organization. They are getting the facility of allotment of quarters, house loan facility, PPF contribution and medical facilities. Even though they are working continuously since more than 20 years in the Respondent's organization they have not been regularised. The Respondent has exploited the services of the Petitioners only by giving 50% of wages. The action of the Respondent is nothing but only exploitation of man power. The Respondent has adopted unfair labour practice without giving sufficient remuneration to the workmen. Admittedly, there is no break of service of the Petitioners since the date of their joining in the Respondent's organization. In a year they have completed 240 musters and since the date of their joining till date they are working continuously. Under the circumstances stated above, the Petitioners are entitled to get their services regularised from the date when they have completed 240 musters i.e., after completion of atleast one year of their service in the Respondent organization. Since the Petitioners have worked continuously there without any break, they are entitled to be regularised and to get all their back wages from the date of regularization of their service with all other attendant benefits as applicable to the permanent employees of Visakhapatnam Port Trust.

Thus, Point No.II is answered accordingly.

ORDER

The action of the management of Visakhapatnam Dock Labour Board in not regularising the services of 29 casual workers (as per list enclosed) though they are working since 1992 with Dock Labour Board, Visakhapatnam is not justified. The Petitioners are entitled to get regularization of their services from the date after completion of 240 musters or after completion of one year of service along with back wages and all terminal benefits since the date of their regularization of service on par with the permanent employees of Visakhapatnam Port Trust. The Respondent is directed to regularise the services of the Petitioners (as mentioned in the cause title) in their posts with back wages, along with other consequential monetary benefits including all attendant benefits payable to the Petitioners on the basis of periodical revision of pay scales from time to time applicable to them from the date of their entitlement, after completion of 240 musters i.e., after completion of atleast one year of service, within a period of three months from the date of receipt of this award.

If the Respondent management fails to comply with the above order, back wages shall be paid to the Petitioners with interest @ 7% p.a.

Award passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 16th day of February, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

WW1: Sri Dantuluri Venkata

Suryanarayana Raju

WW2: Sri Ummidi Chanti

WW3: Sri Ch. Tata Rao

Witnesses examined for the Respondent

MW1: Sri J. Param Jyothi

Documents marked for the Petitioner

- Ex.W1 : Photostat copy of posting letter of WW1 dt.21.5.1993
- Ex.W2 : Photostat copy of appointment order of WW2 dt.24.11.1993
- Ex.W3 : Photostat copy of duty roster dt. 29.8.2002
- Ex.W4 : Photostat copy of duty roster of December dt.26.11.2008
- Ex.W5 to : Photostat copies of appointment orders of Petitioner No.1 to 29
- Ex.W33:

Documents marked for the Respondent

- Ex.M1 : Photostat copy of report of the staff inspection unit on the staffing study of the DIB, Visakhapatnam, Ministry of Surface Transport.
- Ex.M2 : Photostat copy of memorandum of charges framed against R. Sudhakar
- Ex.M3 : Photostat copy of letter dated 8.9.1989 of Ministry of Surface Transport reg. implementation of SIU report
- Ex.M4 : Photostat copy of Visakhapatnam Dock Labour Board (Staff Recruitment & Conditions of service) Rules 1970.
- Ex.M5 : Photostat copy of affidavit filed by Respondent in WP No.14413/2001.
- Ex.M6 : Photostat copy of booklet containing settlement on wage revision, retirement benefits and conditions of service of Port and Dock Workers at major ports w.e.f. 1.1.1997.

नई दिल्ली, 7 अप्रैल, 2017

का.आ. 924.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स नेशनल इंश्योरेंस कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 36/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-17012/14/2011-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 7th April, 2017

S.O. 924.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2012) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. National Insurance Co. Ltd. and their workman, which was received by the Central Government on 03.04.2017.

[No. L-17012/14/2011-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/36/12**

Shri Ram Swarup Gupta,
S/o Late Tukaram Gupta,
Rajiv Nagar, Basantpur,
Ward No.38, Rajnandgaon (CG)

...Workman

Versus

Branch Manager,
National Insurance Co.Ltd.,
Kamathiline Branch,
Rajnandgaon (CG)

...Management

AWARDPassed on this 31st day of January 2016

1. As per letter dated 14-2-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-17012/14/2011-IR(M). The dispute under reference relates to:

“Whether the action of the management of National Insurance Co.Ltd., Kamathiline Branch, Rajnandgaon in terminating the services of Shri Ram Swarup Gupta, Ex-peon w.e.f. 8-9-07 without observing the provisions of Section 25-F of ID Act is legal and justified? What relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of workman is that he was appointed against vacant post of peon on 29-2-04. He was working 8 hours every day. He was working with devotion, workman was paid wages Rs. 50 per day. Work on which he was engaged is of permanent nature, workman was paid wages. After obtaining applications from him, workman was compelled to submit applications in name of different persons for making payment of wages. 3 post of peon are sanctioned in Rajnagar branch of 2nd party. When workman claimed equal wages to the regular employees, his services were terminated on 8-9-07. His services were terminated without assigning any reasons. That workman had completed more than 240 days continuous service during each of the year. He was not served with notice, retrenchment compensation was not paid to him. Termination of his service is in violation of Section 25-F of ID Act. After termination of his service he is unemployed and facing hardship. On such ground, workman prays for his reinstatement with consequential benefits.

3. 2nd party management filed Written Statement opposing claim of Ist party. 2nd party submits that Ist party claimants was never appointed against vacant sanctioned post. For temporary work in office, workman was called, he was paid on vouchers from the funds available in the branch. Workman was given temporary work for day or two on daily wage basis at collector rate. It is reiterated that Ist party workman was not pressurized to write applications in name of other persons. He was not continuously working. The wages were increased to Rs.70 per day at Collector rate. Workman had not completed 240 days continuous working. It is denied that workman as removed from service on 8-9-07 after demanding equal pay with regular employees. Workman was not given appointment, he was engaged for 1-2 days on daily wage basis. As workman has not completed 240 days working during any of the year, notice of termination or payment of retrenchment compensation was not required. 2nd party denied employer employee relationship. 2nd party denies that termination of service of Ist party is in violation of provisions of ID Act. 2nd party further submits workman worked for 45 days in 2003-04, 74 days in 2004-05, 59 days in 2005-06, 44 days in 2006-07. Workman is not entitled for reinstatement. Claim of workman be rejected.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of National Insurance Co.Ltd., Kamathiline Branch, Rajnandgaon in terminating the services of Shri Ram Swarup Gupta, Ex-peon w.e.f. 8-9-07 without observing the provisions of Section 25-F of ID Act is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

REASONS

5. Point No.1: The term of reference pertains to termination of services of workman from 8-9-07. Workman filed affidavit of his evidence supporting his contentions in statement of claim that he was appointed against vacant post of peon on 29-2-04. He was working 8 hours in a day from 2004 to 2007, he was paid Rs.50 per day. When he claimed equal wages as paid to regular employees, his services were terminated. That at the time of payment of wages, he was pressurized to submit application in name of other persons. He was continuously working from 29-2-04 till 8-9-09. His services are terminated without notice, retrenchment compensation was not paid to him. In his cross examination, workman says appointment letter was not given to him. Wages were paid under voucher. Vouchers for the period 2006-07 are produced by him. Vouchers for the year 2004-05 are not produced. His elder brother was transferred. After transfer of his brother, he was engaged in place of his elder brother. Branch Manager P.S.Bindra, K.L.Rajak supported him to suggested him to submit applications in different names but actually he had to work, he shall not have any objection. After 1 ½ years of his service, he was paid wages Rs. 70 per day. He not submitted application in writing claiming equal wages with regular employees. He denies that h was engaged for 1-2 days. Working days suggested in his cross during the year 2003-04, 2004-05, 2005-06, 2006-07 are denied. Order of termination was not received by him.

6. Management's witness P.S.Bindra filed affidavit of his evidence supporting whole contentions in Written Statement filed by management. That Ist party workman was not continuously working. He worked for 45 days in 2003-04, 74 days in 04-05, 59 days in 05-06, 44 days in 06-07. Management's witness in his cross examination says Ist party workman was working therefore he is acquainted with him. Workman was doing work of supplying drinking water, cleaning sweeping and casual work. He was paid in cash. 2 post of regular peon sanctioned, documents are not produced. He denies that 3 post of peon were sanctioned in the office. In his cross, management's witness denies that workman completed 240 days continuous service. He admits that workman has not paid retrenchment compensation. Notice of termination was not issued to workman.

7. Turning to the documentary evidence, workman has produced vouchers Exhibit W-1/1 to 1/369, management has produced Exhibit M-1 showing details of the payments made to workman and others. However careful perusal of Exhibit M-1 shows names of Ramu, Ganesh, Gopal, Hiranman, Deolal, Munnaram etc are shown in Exhibit W-2 alongwith the dates and amounts paid. The vouchers produced by workman in name of Shiv Kumar, Gopichand, Ramkishore, Naveen, Suryakant, Nishanyt, Balram and others, the entries of payments of amount appears in Exhibit M-1. However their names are not recorded in Exhibit M-1. All the payment vouchers Exhibit W-1/1 to 369 appears in same handwriting even the signatures appears in the same handwriting. Careful perusal of those documents corroborates evidence of Ist party workman that he was continuously working and he was compelled to submit applications in different names for payment of wages. I am convinced that the payments under Exhibit W-1/2 to 369 was made to Ist party workman. He was working in the Bank. 2nd party has not disclosed name of any other person engaged for casual nature of work to whom amount was paid. The entries about payment in Exhibit M-1 leaving the names blank corroborates evidence of Ist party workman. Workman has established that he was continuously working more than 240 days preceding 12 months of termination of his service. Management's witness admitted that workman was not served with notice of termination, retrenchment compensation was not paid to him. So far as evidence of management's witness R.S.Rahul from his evidence Exhibit M-1 was admitted. In his cross, he admitted vouchers Exhibit W-1/1 to 369. Those vouchers corroborates evidence of Ist party workman. Therefore I record my finding in Point No.1 in Negative.

8. Point No.2 In view of my finding in Point No.1 termination of services of workman is in violation of Section 25-F of ID Act, question remains for consideration is whether workman is entitled for reinstatement with backwages. Ist party workman in his cross examination says he has not received order of appointment of termination. After transfer of his brother, he was engaged in place of his brother, reinstatement of workman would not be justified. Considering the workman was working from February 2004 to 8-9-07 for about 3 years and 6 months, compensation Rs.75,000 would be appropriate. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The action of the management of National Insurance Co.Ltd., Kamathiline Branch, Rajnandgaon in terminating the services of Shri Ram Swarup Gupta, Ex-peon w.e.f. 8-9-07 without observing the provisions of Section 25-F of ID Act is not proper and legal.
- (2) 2nd party is directed to pay compensation Rs.75,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 अप्रैल, 2017

का.आ. 925.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारत गोल्ड माइन्स लिमिटेड एवं मैग्नीज ओर (इण्डिया) लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 79/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-43012/21/1995-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 7th April, 2017

S.O. 925.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 79/1996) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Bharat Gold Mines Ltd. And Manganese Ore (India) Ltd. and their workman, which was received by the Central Government on 03.04.2017.

[No. L-43012/21/1995-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/79/1996**

Shri Rajendra Mahipat Fulzale,
R/o Nagardhan,
Tehsil Ramtak,
Distt. Nagpur

...Workman

Versus

General Manager(P),
Manganese Ore(India) Ltd.,
3, Mount Road Extension,
Nagpur

Manager,
Bharat Gold Mines Ltd.,
Beldngri Mines,
Tehsil Ramtek, Nagpur

...Management

AWARDPassed on this 31st day of January 2017

1. As per letter dated 18-3-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-43012/21/95-IR(Misc.).The dispute under reference relates to:

“Whether the action of the management of Bharat Gold Mines Ltd. PO Oorgaum, KGF 563120 in terminating the services of Shri Rajendra Mahipat, a semi skilled time rated worker w.e.f. 16-4-95 as claimed by him is legal, proper and just? If not, what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. 2nd party workman submitted statement of claim at Page 2/1 to 2/3. Case of workman is that he was working with 2nd party MOIL, Manager BGML from 19-11-92 as labour. He was paid Rs.41 per day. Initially management issued employment card to him. He was given employment every two months with artificial gap of 4-5 days. Management had taken back original copy of appointment orders. Workman was not in extended benefits and privileges of permanent employees by PF, bonus, wages, rest medical facilities. Workers who were working with the management had approached ALC, Nagpur vide representation dated 17-10-94. ALC Nagpur initiated enquiry in the matter. Workers first time opened their mouth regarding their grievances instead of allowing benefits and privileges. Management terminated services of the workers on 15-4-95 without assigning any reason that workman had put 240 days attendance every year of service. Their services were

terminated without notice, retrenchment compensation as not paid to him. Termination of his service is illegal. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party MOIL filed Written Statement at Page 8/1 to 8/6 opposing claim of workman. 2nd party MOIL claims that it is undertaking of Government of India having office at Mount Road, Nagpur. MOIL has several manganese mine situated at MP and Maharashtra. That BGML is also undertaking of Government of India having office at Karnataka. Management of BGML diversifies its activities in mines construction and contract work. That contract of MOIL and BGML was entered in September 1992 for construction of underground shaft. It is reiterated that the BGML had engaged labours for the work under contract. There is no employer employee relationship between MOIL and workman. In its Written Statement, MOIL has admitted Kewalramji and others were engaged as temporary employee during 19-11-92 for time bound contract work. It is also admitted that the claimant was issued employment card. The claimant was appointed locally by local officer on minimum wages Rs.34.46 per day for 2 months by Local Officer. The claimant accepted the employment of temporary nature for specific contract work, they were engaged. Work was completed, his services were deemed to be terminated after expiry of contract work. Disengagement of claimant is covered under Section 2(oo)(bb) of ID Act, it does not amount to retrenchment. That the terms of reference are not clear about right of liability of MOIL and claimant workman. There is no specific prohibition for awarding contract work. For recruitment of employees in MOIL, there is recruitment procedure of the company. The vacancies are notified to local Employment Exchange. Claimant was not engaged following recruitment procedure. Therefore claimant is not entitled for regularization on the ground of continuous working. Claim of workman is not justified. It deserves to be rejected.

4. 1st party No.2 BGML submitted separate Written Statement at Page 11/1 to 11/6. BGML contends that it is Government of India enterprise. It was awarded contract by MOIL in February 1992 for construction of underground shaft. The contract work was completed in April 1995. The activities of BGML had come to end after the contract was completed, the employees engaged by contractor of BGML provisions of CL Act do not apply. That BGML follows all legal provisions of the act. As per management of MOIL, BGML complied provisions of labour laws. There was no complaint against the contractor BGML. That management of MOIL is not liable to provide employment to workman engaged by BGML. That claimant workman was employed purely on adhoc basis to execute contract work by management of BGML. The contract work is temporary which continues as long as contract continues. The claimant was paid wages at rate of semiskilled workers. His appointment was from 19-11-92 for specific period. The renewal of contract depended on contract awarded to the company. The claim accepted terms and conditions of the appointment. The claimant workman was not appointed on permanent post following recruitment rules. The appointment clearly indicates that on completion of contract, services stand automatically cancelled. No notice will be given. BGML has referred to ratio held in various cases reiterating workman is not entitled to regularization. It is further contented that the claimants are entitled to benefits of PF, EPF, exgratia, medical facilities etc. the claimant was paid minimum wages as per rates fixed by Government including PF, exgratia amount. It is reiterated that claimant has not completed 240 days continuous service. Violation of provision of ID Act has been denied.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Bharat Gold Mines Ltd. PO Oorgaum, KGF 563120 in terminating the services of Shri Shri Rajendra Mahipat, a semi skilled time rated worker w.e.f. 16-4-95 as claimed by him is legal, proper and just?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. Point No.1 The term of reference pertains to legality of termination of service of claimant Kewal Ramaji. Workman filed affidavit of his evidence. He has stated that he was engaged by management from 19-11-82 as labour, he was paid Rs.41 per day, he was continuously working with the management. Artificial break was given to him. He was given employment by management but he was denied benefit of PF, bonus, medical facilities etc. His services were terminated on 15-4-95 in violation of Section 25-F of ID Act. In his cross examination, claimant workman admits he was engaged by BGML as admitted appointment letter Exhibit M-1. He denies that his appointment was extended time to time. Appointment order in original is not with him. He claims ignorance what work was given in contract to BGML. He was paid wages at end of month. As per the working days, he did not recollect the rate of wages he was paid. BGML company continued him in employment till the work was continued. He denies that BGML company is

closed. He denied that at BGML company, there is work at Balaghat, Guna. He claims ignorance whether BGML company was closed 5 years back and not carrying any work.

7. Management's witness Nitin Pagnis Chief Personal Manager of MOIL filed affidavit of his evidence. He has stated that agreement was executed between MOIL and BGML contractor on 31-5-91. BGML completed work allotted to it. Work completion certificate is produced. That BGML completed contract work in April 1995. BGML complied with the provisions of labour laws during execution of work. That Board of BGML had approached board for industrial financial reconstruction (BIFR). BGML was wound up under section 20(1). The opinion of Board was forwarded to concerned High Court. The Appellate Authority as per order dated 15-11-2000 held rehabilitation proposal submitted by BGML was not workable. In his cross examination, management witness for MOIL says he is working as Personal Manager at Nagpur office from 2006. He claims ignorance about notice issued in 1992 for filling of tenders in 1992. BGML is a public undertaking, work was given to BGML. Work carried by BGML was supervised by MOIL. After completion of work of BGML, certificate was issued about completion of work. Management's witness was unable to tell at the time of issuing NOC, whether information about payments of labours was considered.

8. Management's witness Sjhri N.Ramaswami filed affidavit of his evidence that BGML is Government of India enterprises. MOIL had awarded contract of BHML in February 1992 of underground shaft in underground mines of MOIL. From his evidence, documents Exhibit M-2 to 8 are admitted in evidence. In his cross-examination, said witness of management says signatures on documents M-2 to 8 were not obtained in his presence. He denies that BGML carries work through out India engaging contract labours from different places. The contract between BGML and MOIL was for the period 91 to 94. Thereafter BGML carried work in Balaghat unit of MOIL. Said work was carried till year 2001. Appointment letter of workman at Beldongri unit is produced at Exhibit M-1. BGML was paying wages in cash and its account was maintained. Notice of termination was not given to workman, retrenchment compensation was not paid to him. Management's witness says he has no knowledge of mining work or use of explosive in mining work. Evidence of management's witness Nitin Pagnis in cross examination shows that he claims ignorance that BGML carried work during the year 1991 to 1993. That completion certificate was given to BGML after completion of work. He claims ignorance whether information was collected about payments made to workman before issuing NOC. He admits that work of mines of MOIL is still continued.

9. The documents are produced Exhibit M-2 agreement dated 31-5-91 w.r.t. work of sinking of vertical shaft having size 4.6 mtrs x 1.8 mtrs depth 70 mtrs at Beldongri mines. Para 5 pertains to expertise fees based on the actual monthly progress. Agreement also pertains to workshop facilities power supply, salary wages to concerned employees, liability for compensation on account of accident was on contractor BGML. Personal requirements bills in advance, commencement and completion of work. Work was to be completed by end of September 1993. Exhibit M-3 completion certificate shows the contract work to BGML was completed on 15-4-95. Exhibit M-4 is notice of completion dated 14-5-95. Exhibit M-5 is certificate in Form V by Principal Employer. BGML had undertaken to comply provisions of Contract Labour Act. Exhibit M-6 is copy of letter dated 12-6-00 BGML was wound up under Section 20(1) of BIFR Act. Exhibit M-7 is order passed by Appellate Authority. Any scheme for rehabilitation of BGML was not found workable. Exhibit M-8 is closure report of BGML mines. M-9 is appointment letter given to the claimant for the period 9-11-92 to 18-1-93. As per document Exhibit M-3, work of BGML was completed on 15-4-95, no evidence is adduced that why workman was not engaged till completion of work. Therefore evidence of workman deserves to be accepted that workman was continuously working till termination of his service on 16-4-95. When work was closed and services of Ist party workman were terminated, Ist party workman was not served with notice, no retrenchment compensation was paid by BGML. Therefore the termination of workman is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

10. Point No.2- In view of my finding in Point No.1 termination of services by BGML is illegal for violation of Section 25-F of ID Act, question remains for consideration is whether claimant workman is entitled for reinstatement. As per order annexed with Exhibit M-6, BGML is declared sick unit. Under section 20(1) of Rehabilitation, the scheme for BGML was not workable. The BGML is closed as per Exhibit M-8. The relief of reinstatement is not justified. Considering workman was engaged by contractor BGML, reasonable compensation Rs.75,000/- deserves to be awarded against BGML. However BGML is declared sick unit, it has been closed. If the amount of compensation could not be recovered from BGML, as per Section 21(4) of CL Act, claimant is entitled to recover compensation amount from management of MOIL. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the management of Bharat Gold Mines Ltd. in terminating the services of Shri Rajendra Mahipat, a semi skilled time rated worker w.e.f. 16-4-95 is not legal.
- (2) Management of BGML is directed to pay compensation Rs.75,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization. In case compensation amount could not be recovered from BGML, claimant is at liberty to recover compensation amount from management of MOIL.

R. B. PATLE, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 926.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, राष्ट्रीय एयरोस्पेस लैबोरेटरीज, ध्वनिक टेस्ट सुविधा व अन्य, बेंगलोर एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलोर के पंचाट (संदर्भ संख्या 17/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.03.2017 को प्राप्त हुआ था।

[सं. एल-42012/74/2015-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 926.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 17/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Aerospace Laboratories, Acoustic Test Facility and others, Bangalore and their workman, which was received by the Central Government on 21.03.2017.

[No. L-42012/74/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 10th MARCH, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

C R No. 17/2015

I Party

Sh. Raju. B,
S/o Basappa, 4th Cross,
Gurudarshan Layout, Basava Samithi,
Vidyaranyapura, Thindlu,
Bangalore – 560097

II Party

1. The Director,
National Aerospace Laboratories,
Acoustic Test Facility,
Belur, Bangalore – 560037
2. M/s. Viskaan Associates, No. 2,
2nd Floor, 1st Main Road,
Muneshwara Block, Mahalakshmi Layout,
Bangalore – 560086
3. M/s. Bee Jee Facility Services, No. 68,
Sridevi Complex, Jayanagar 7th Block,
KKP Main Road, Bangalore – 560082

Advocate for I Party: Mr. A.J. Srinivasan

Advocate for II Party: Mr. G. Lakshmeesh Rao,
Mr. L. Vijikumar & Mr. K. Srinivasa

AWARD

1. The Central Government vide Order No. L-42012/74/2015-IR(DU) dated 22.04.2015 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the claim of Shri Raju.B for reinstatement as project assistant in CSIR-NAL is valid and justified? If not, to what relief the he is entitled to?”

2. Brief details mentioned in the claim statement are as follows:-

The I Party workman states that he has studied SSLC and thereafter completed PUC and took up ITI Training in Welding Trade and successfully completed the same on July 1996. The I Party thereafter joined BEL as Apprenticeship trainee and completed the same by October 1999. The I Party worked as Technical Assistant in the Bangalore unit of NAL. The I Party and three other workers have been called by the II Party No.1, on 03.01.2011 and their Identity Cards have been taken away and they have been orally informed that they are removed from service. The I Party and other workmen being aggrieved by the action of the II Party No.1, in refusing employment to them, approached the Hon'ble Central Administrative Tribunal and thereafter before the Hon'ble High Court, which finally culminated in order dated 01.10.2013. The Hon'ble High Court has set aside the orders of Central Administrative Tribunal, passed as against the I Party reserving liberty to the I Party to approach the competent forum for adjudication of his rights, without going into the question of limitation. The II Party No.1 is supposed to be an 'ideal employer' and a 'model employer' and set an example to the private industry. It is unfortunate that such exploitive practices are continued and perpetuated in such Government owned public sectors and workers are hired and fired as per their whims and fancies of the officers incharge and various forms of illegal and unfair labour practices go unchecked in the II Party No.1 till this day. The I Party has prayed that he has worked as Technical Assistant in Bangalore Unit of National Aerospace Laboratories and also he has prayed to hold that the II Party No.1 as the true employer of the I Party workman and further direct the II Party No.1 to reinstate the I Party workman, in his original post, with full back wages, continuity of service and all other consequential benefits, along with the costs of these proceedings, in the interest of justice.

3. However, the counsel for the II Party has straight away drawn the attention of the Court to the Judgment passed by the Division bench in W.P. No. 9974/2006(L-TER) dated 7th January 2015, by Hon'ble Mr. Justice D.H. Waghela, Chief Justice and Hon'ble Mr. Justice Budihal. R.B, Reported in ILR 2015 Karnataka 349; 2015(3)Kar LJ127; 2015LabIC3042, 2015(3)LLN434(kar.), In the Hon'ble High Court of Karnataka at Bengaluru, in W.P. No. 9974/2006(L-TER), Decided on: 07.01.2015, Between The Management of National Aerospace Laboratories Vs Engineering & General Workers Union and the same has also been upheld by the Hon'ble Supreme Court in its Order dated 24.09.2015, in SLP No. 13880/2015. In the said W.P the petitioner, management of National Aerospace Laboratories (NAL), has challenged the award dated 30.12.2005 of the Industrial Tribunal, Bangalore in I.D. No. 37/2001, directing regularization of services of 24 workmen from the date of reference, with appropriate pay scales. Government of Karnataka, referred the dispute on 24.04.2001 to Industrial Tribunal, Bangalore, under Section 10(1)(c) of the Industrial Dispute Act, 1947 with the terms of reference as under:

- (i) “Whether the Engineering and General Workers union is justified in demanding (complaining) that the Management of M/s. National Aerospace Laboratories Bangalore establishment has not made the services of 67 persons, working as contract labour permanent, although they have been discharging work of permanent nature?
- (ii) If not, what relief the said contract workmen are entitled to ?”

Ultimately it is held by the said Hon'ble High Court that, the workmen concerned shall be treated at par with regular employees in their eligible posts as per the table and paid the difference of wages and benefits from the date of reference. The arrears due to the workmen as on the date of the impugned award from the date of reference shall be paid with interest at the rate of 9% per annum. The arrears on account of difference of wages for the period subsequent to the date of the award shall be capitalized at the end of each year and shall be paid with 9% interest per annum from the date of the end of each such year. The payment of interest on arrears of difference of wages from the date of the award is necessary and justified by the fact of inflation and constantly corroding purchasing power of money. Besides that, withholding of the benefits due to the workmen since the impugned award has to be duly compensated.

4. In the above mentioned facts and circumstances, an important and preliminary point arises for consideration, with regard to the above mentioned matter as follows:- “Whether this Tribunal lacks jurisdiction to try the said Matter?”

5. **POINT :-** In the present case, the I Party has prayed to hold that the said NAL Management is the true employer of the I Party workman and also further requested to direct the said NAL Management to reinstate the I Party workman in his original post with full back wages, continuity of service and all other consequential benefits, along with the costs of these proceedings, in the interest of justice. Hence, it is crystal clear that as per the above mentioned judgment, this Tribunal lacks jurisdiction to try the present matter.

6. Further, taking into consideration the above mentioned points and principles laid down by the Lordships of the Hon'ble High Court of Karnataka, this Tribunal has no other alternative, except to follow the judgement of the Hon'ble High Court of Karnataka dated 07.01.2015 and also, confirmed by the Hon'ble Supreme Court of India, and therefore, the I Party cannot seek the reliefs, before this Tribunal. At the same time, this Tribunal is not expressing any opinion on other issues raised by both the sides, as this Tribunal lacks jurisdiction to entertain the present matter of this nature and also liberty is granted to the I Party to raise the dispute before the proper, competent and appropriate Judicial Forum/Tribunal/Court within 30 days from the date of receipt of the present Award passed by this Tribunal, in the best interest of justice, equity and fair play, and the matter has to be disposed of. Accordingly, this point is answered. Hence, the following Award is passed:-

AWARD

This Tribunal has no jurisdiction to entertain the disputes raised by the I party, particularly, in the light of the above mentioned judgement passed by the Hon'ble High Court of Karnataka by the Hon'ble Division bench in W.P. No. 9974/2006(L-TER) dated 7th January 2015, by Hon'ble Mr. D.H. Waghela, Chief Justice and Hon'ble Mr. Justice Budihal. R.B, and also confirmed by the Hon'ble Supreme Court, and the present matter suffers for want of jurisdiction before this Tribunal and liberty is given to the I party to raise the dispute before the proper, competent and appropriate Judicial Forum/ Tribunal/Court, within 30 days from the date of receipt of the present Award, by adopting the procedure known under the law, in the best interest of justice, equity, good conscience and fair play and this Tribunal has not expressed any opinion regarding the various other issues raised by both the parties, as the present matter has been disposed of, on the limited ground of jurisdiction point alone, and also, without costs, for the above mentioned facts and circumstances.

(Dictated, transcribed, corrected and signed by me on 10th March, 2017)

V. S. RAVI, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 927.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, राष्ट्रीय एयरोस्पेस लैबोरेटरीज, ध्वनिक टेस्ट सुविधा व अन्य, बेंगलूर एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 16/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.03.2017 को प्राप्त हुआ था।

[सं. एल-42012/73/2015-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 927.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 16/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Aerospace Laboratories, Acoustic Test Facility and others, Bangalore and their workman, which was received by the Central Government on 21.03.2017.

[No. L-42012/73/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 10th MARCH, 2017

PRESENT : Shri V S RAVI, Presiding Officer

C R No. 16/2015

I Party

Sh. Raju. M,
S/o Muniyappa, 4th Cross,
No. 13, Yamalur,

II Party

1. The Director,
National Aerospace Laboratories,
Acoustic Test Facility,

Yamalur Post,
Bangalore – 560035

Belur, Bangalore – 560037

2. M/s. Viskaan Associates, No. 2,
2nd Floor, 1st Main Road,
Muneshwara Block, Mahalakshmi Layout,
Bangalore – 560086
3. M/s. Bee Jee Facility Services, No. 68,
Sridevi Complex, Jayanagar 7th Block,
KKP Main Road, Bangalore – 560082

Advocate for I Party: Mr. A.J. Srinivasan

Advocate for II Party: Mr. G. Lakshmeesh Rao,
Mr. L. Vijikumar & Mr. K. Srinivasa

AWARD

1. The Central Government vide Order No.L-42012/73/2015-IR(DU) dated 22.04.2015 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the claim of Shri Raju.M for reinstatement as project assistant in CSIR-NAL is valid and justified? If not, to what relief the he is entitled to?”

2. Brief details mentioned in the claim statement are as follows:-

The I Party workman states that he has studied up to 9th Standard and worked as Technical Assistant in the Bangalore unit of NAL. The I Party and three other workers have been called by the II Party No.1, on 03.01.2011 and their Identity Cards have been taken away and they have been orally informed that they are removed from service. The I Party and other workmen being aggrieved by the action of the II Party No.1, in refusing employment to them, approached the Hon’ble Central Administrative Tribunal and thereafter before the Hon’ble High Court, which finally culminated in order dated 01.10.2013. The Hon’ble High Court has set aside the orders of Central Administrative Tribunal, passed as against the I Party reserving liberty to the I Party to approach the competent forum for adjudication of his rights, without going into the question of limitation. The II Party No.1 is supposed to be an ‘ideal employer’ and a ‘model employer’ and set an example to the private industry. It is unfortunate that such exploitive practices are continued and perpetuated in such Government owned public sectors and workers are hired and fired as per their whims and fancies of the officers incharge and various forms of illegal and unfair labour practices go unchecked in the II Party No.1 till this day. The I Party has prayed that he has worked as Technical Assistant in Bangalore Unit of National Aerospace Laboratories and also he has prayed to hold that the II Party No.1 as the true employer of the I Party workman and further direct the II Party No.1 to reinstate the I Party workman, in his original post, with full back wages, continuity of service and all other consequential benefits, along with the costs of these proceedings, in the interest of justice.

3. However, the counsel for the II Party has straight away drawn the attention of the Court to the Judgment passed by the Division bench in W.P. No. 9974/2006(L-TER) dated 7th January 2015, by Hon’ble Mr. Justice D.H. Waghela, Chief Justice and Hon’ble Mr. Justice Budihal. R.B, Reported in ILR 2015 Karnataka 349; 2015(3)KarLJ127; 2015LabIC3042, 2015(3)LLN434(kar.), In the Hon’ble High Court of Karnataka at Bengaluru, in W.P. No. 9974/2006(L-TER), Decided on: 07.01.2015, Between The Management of National Aerospace Laboratories Vs Engineering & General Workers Union and the same has also been upheld by the Hon’ble Supreme Court in its Order dated 24.09.2015, in SLP No, 13880/2015. In the said W.P the petitioner, management of National Aerospace Laboratories (NAL), has challenged the award dated 30.12.2005 of the Industrial Tribunal, Bangalore in I.D. No. 37/2001, directing regularization of services of 24 workmen from the date of reference, with appropriate pay scales. Government of Karnataka, referred the dispute on 24.04.2001 to Industrial Tribunal, Bangalore, under Section 10(1)(c) of the Industrial Dispute Act, 1947 with the terms of reference as under:

- (i) “Whether the Engineering and General Workers union is justified in demanding (complaining) that the Management of M/s National Aerospace Laboratories Bangalore establishment has not made the services of 67 persons, working as contract labour permanent, although they have been discharging work of permanent nature?
- (ii) If not, what relief the said contract workmen are entitled to ?”

Ultimately it is held by the said Hon’ble High Court that, the workmen concerned shall be treated at par with regular employees in their eligible posts as per the table and paid the difference of wages and benefits from the date of reference. The arrears due to the workmen as on the date of the impugned award from the date of reference shall be

paid with interest at the rate of 9% per annum. The arrears on account of difference of wages for the period subsequent to the date of the award shall be capitalized at the end of each year and shall be paid with 9% interest per annum from the date of the end of each such year. The payment of interest on arrears of difference of wages from the date of the award is necessary and justified by the fact of inflation and constantly corroding purchasing power of money. Besides that, withholding of the benefits due to the workmen since the impugned award has to be duly compensated.

4. In the above mentioned facts and circumstances, an important and preliminary point arises for consideration, with regard to the above mentioned matter as follows:- “Whether this Tribunal lacks jurisdiction to try the said Matter?”

5. **POINT :-** In the present case, the I Party has prayed to hold that the said NAL Management is the true employer of the I Party workman and also further requested to direct the said NAL Management to reinstate the I Party workman in his original post with full back wages, continuity of service and all other consequential benefits, along with the costs of these proceedings, in the interest of justice. Hence, it is crystal clear that as per the above mentioned judgment, this Tribunal lacks jurisdiction to try the present matter.

6. Further, taking into consideration the above mentioned points and principles laid down by the Lordships of the Hon’ble High Court Of Karnataka, this Tribunal has no other alternative, except to follow the judgement of the Hon’ble High Court Of Karnataka dated 07.01.2015 and also, confirmed by the Hon’ble Supreme Court of India, and therefore, the I Party cannot seek the reliefs, before this Tribunal. At the same time, this Tribunal is not expressing any opinion on other issues raised by both the sides, as this Tribunal lacks jurisdiction to entertain the present matter of this nature and also liberty is granted to the I Party to raise the dispute before the proper, competent and appropriate Judicial Forum/Tribunal/Court within 30 days from the date of receipt of the present Award passed by this Tribunal, in the best interest of justice, equity and fair play, and the matter has to be disposed of. Accordingly, this point is answered. Hence, the following Award is passed:-

AWARD

This Tribunal has no jurisdiction to entertain the disputes raised by the I party, particularly, in the light of the above mentioned judgement passed by the Hon’ble High Court of Karnataka by the Hon’ble Division bench in W.P. No. 9974/2006(L-TER) dated 7th January 2015, by Hon’ble Mr. D.H. Waghela, Chief Justice and Hon’ble Mr. Justice Budihal. R.B, and also confirmed by the Hon’ble Supreme Court, and the present matter suffers for want of jurisdiction before this Tribunal and liberty is given to the I party to raise the dispute before the proper, competent and appropriate Judicial Forum/ Tribunal/Court, within 30 days from the date of receipt of the present Award, by adopting the procedure known under the law, in the best interest of justice, equity, good conscience and fair play and this Tribunal has not expressed any opinion regarding the various other issues raised by both the parties, as the present matter has been disposed of, on the limited ground of jurisdiction point alone, and also, without costs, for the above mentioned facts and circumstances.

(Dictated, transcribed, corrected and signed by me on 10th March, 2017)

V. S. RAVI, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 928.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार वैज्ञानिक-इन-चार्ज, प्राकृतिक इतिहास के क्षेत्रीय संग्रहालय, भुवनेश्वर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 35/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.02.2017 को प्राप्त हुआ था।

[सं. एल-42012/51/2007-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 928.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 35/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in Annexure, in the industrial dispute between the employers in relation to the Scientist-in-charge, Regional Museum of Natural History, Bhubaneswar and their workman, which was received by the Central Government on 28.02.2017.

[No. L-42012/51/2007-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR****Present:**

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 35/2007

Date of Passing Award – 30th January, 2017

Between:

The Scientist-in-Charge,
Regional Museum of Natural History,
P.O. Regional Research Laboratory,
Bhubaneswar

...1st Party-Management

(And)

Shri Gangadhar Das,
Plot No. 13, Sahidnagar,
Bhubaneswar (Orissa) – 751 007

...2nd Party-Workman

Appearances:

M/s. J.K. Nayak, Advocate	...	For the 1 st Party-Management
M/s. Susanta Das, Advocate	...	For the 2 nd Party- Workman

AWARD

The award is directed against a reference with following schedule:-

“Whether the action of the management of Regional Museum of Natural History in terminating the services of their workman Shri Gangadhar Das w.e.f. 05.08.2003, is legal and justified? If not, to what relief the workman is entitled?”

made by the Government of India, Ministry of Labour & Employment in exercise of the powers conferred by clause (d) of Sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide letter No. L-42012/51/2007 – IR(DU), dated 17.10.2007.

2. The case of the 2nd party-workman, in short is that the 1st Party-Management purchased TATA-Sumo vehicle in July, 1997 and made a requisition to the Dist. Employment Exchange, Khurda, Bhubaneswar in Sept., 1997 for sponsoring a list of candidates for the post of Driver to run the vehicle. The 1st Party-Management purchased another vehicle of TATA-407 model in November, 1997. As there was delay in selection and recruitment of the Driver through employment exchange, the Management decided to engage a temporary Driver on daily wage basis. The disputant workman was employed temporarily as a Driver on daily wage basis with effect from 1.11.1997. Eighteen names including the disputant workman were sponsored by the District Employment Exchange in December, 1997 and interview was held on 7.1.1998. According to the disputant workman he was selected for the post of Driver in the interview held on 7.1.1998. Pursuant to such selection order of employment was issued to him vide letter No. 105, dated 7.1.1998. Though the appointment letter was issued for the post of vehicle attendant the workman was discharging the duties of Driver. Initially the engagement was made for a period of six months and subsequently it was extended from time to time by the orders of the Management. After continuous engagement of three years the workman made a representation vide his letter dated 25.7.2000 to the authority of the Management to regularize his service by extending him temporary status of employment. But the authority, the Director of Regional Museum of Natural History, New Delhi directed the Management to terminate his service. As a result he was refused employment with effect from 9.10.2000 and an advertisement was floated inviting application for appointment to the post of Driver. However, he continued in his service on account of stay granted by the Hon'ble High Court of Orissa in an O.J.C No. 11732/2000 preferred by him and by virtue of the order of the Hon'ble Central Administrative Tribunal, Cuttack Branch, passed in O.A. No. 42/2002. It has been further pleaded by the disputant workman that his service was terminated with effect from 5.8.2003 after disposal of the case preferred in the Central Administrative Tribunal, Cuttack Bench without compliance of statutory provisions of Section 25-F of the I.D. Act. A further stand has been taken that a Driver post was created for the staff car of the Management and the work of Driver in the office establishment of the Management is perennial and permanent in nature. Such post of Driver is presently filled up on

contractual basis ignoring his claim even though he was duly selected in a recruitment test held for the post of temporary Driver. Since his initial selection and appointment was made in due process of recruitment and his termination with effect from 5.8.2003 was without compliance of notice pay and compensation in lieu of termination of his service, he raised a dispute before the labour machinery. Failure of the conciliation proceedings before the labour machinery resulted in the present reference.

3. Denying the allegations raised by the disputant workman the Management has taken a stand that it is not coming under the purview of “Industry” as defined under section 2(j) of the I.D. Act. The disputant workman was never appointed as a Driver and he was appointed for the post of “vehicle attendant” on daily wage basis for a period of six months with effect from 7.1.1998. He was intimated in writing that the engagement was purely temporary and he would be disengaged at any time without assigning any reason. The disputant workman reported to his duties knowing the above terms and conditions of his engagement. He was engaged for six months initially with effect from 7.1.1998 and thereafter he was engaged for different periods with intermittent break and continued in service till 5.8.2003 due to interim order of the Hon’ble Central Administrative Tribunal in a case preferred by the workman. After disposal of the O.A. Case No. 49/2002 by the Hon’ble CAT, the workman did not report to his duty from 5.8.2003 onwards. As his engagement was contractual in nature and he failed to attend to his duty, the temporary post of vehicle attendant was filled up through out-sourcing on contractual basis. There was no question of termination of service of the workman as the workman had abandoned his service on his own accord and as such, question does not arise for compliance of the provisions of Section 25-F of the Act.

4. Keeping in view the contentions raised by the parties the following issues have been settled for adjudication of the dispute.

ISSUES

1. Whether the action of the Management of Regional Museum of Natural History in terminating the services of their workman Shri Gandadhar Das with effect from 5.8.2013 is legal and justified?
2. If not, to what relief the workman is entitled?

5. Oral as well as documentary evidence have been adduced by both the parties. Besides examining himself as W.W.-1 the disputant workman has filed documents like copies of the letter of the Management dated 29.8.1997, driving license, employment exchange letter sponsoring the name of the workman, list of candidates sponsored by the employment exchange, Management letter dated 26.12.1997, particulars of the sponsoring candidates submitted by the employment exchange, Management letter dated 7.1.1998, absent statement of Management for the month of January, 1998, Management letter No. 10.9.1998, Management letter dated 3.11.1998, office order of Management dated 15.3.1999, letter of the Management dated 31.3.2000, office order of the Management dated 24.9.1999, wage bill of the Management for April, 2000, another wage bill of the Management for July, 2000, representation of the workman sent to the Management, Management letter dated 9.10.2000, Management letter dated 16.10.2000, Management letter dated 2.1.2001, advertisement published in the daily news paper, order of the Hon’ble CAT, Management letter dated 14.6.2005, vacancy circular dated 14.6.2005 issued by the Management and copy of the letter dated 6.8.1998 issued by the Management which are marked as Ext.-1 to 23. Per contra the Management has examined its witness namely Shri Ganganaghatta Nanjegowda Indresha and relied upon the documents like copies of the order of the Hon’ble High Court passed in O.J.C. No. 11732/2000 passed in Misc. case No. 11894/2000, final order of the Hon’ble High Court in O.J.C. No. 11732/2000, order of the Central Administrative Tribunal, Cuttack Bench, dated 31.1.2002, final judgement of the C.A.T. passed in O.A. No. 49/2002, letter No. 105/RMNH/98 dated 7.1.1998 of the scientist in-charge of RMNH, Bhubaneswar, office No. 436/RMNH/99 dated 24.9.1999 of Scientist-in-charge, Head Office, Memorandum for standing finance committee of the Management marked from Ext.-A to Ext.-G to refute the claim of the workman.

ISSUE NO. 1 & 2

6. It is emerging from the pleadings and evidence of the parties more particularly from the copy of the letter dated 16.12.1997 issued by the Employment Exchange, Bhubaneswar to the Management (Ext.-1) and the interview call letter issued to the workman by the Management (Ext.-5) that there is no serious dispute to the fact that a recruitment/selection test was held on 7.1.1998 for the post of a Driver to be engaged on daily wage basis and the disputant workman being selected in the said interview was given engagement vide Ext.- 7. There is also no serious dispute to the fact that the disputant workman was appointed as a “vehicle attendant” on daily wage basis for a period of six months with effect from 7.1.1998 and his engagement was extended from time to time with intermittent break of a small period of three days to a week. Ext.-16 further reveals that explanation was sought for from the officer in-charge of the Management No. 1 for engaging the workman and another for more than 240 days in a year. Besides a direction was given in the said letter for removal of the workmen with immediate effect, when the disputant workman made a representation to accord temporary status to him. There is also no serious dispute to the fact that though the disputant workman was employed being designated as “vehicle attendant”, he was driving the vehicles of the Management. Ext.- 21 and Ext.-22, which are copies of letter and vacancy circular dated 24.6.2005 issued by the Management, clearly

reveal that a post of Driver in Grade-III category has been sanctioned and created in the office of the Management. It is apparent from the cross examination of M.W.-1 that vehicle attendant was driving the vehicles of the Management. He has also admitted that the Dist. Employment Officer was approached by the Management vide Ext.-1 for sponsoring the names of candidates for the post of a Driver. He has stated in his cross examination that wage bills do not indicate any break in the service of the disputant workman and when the workman demanded regularization of his service the Head Office at Delhi issued a letter vide Ext.-16 directing his termination. From such pleadings and evidence of the parties more particularly the documents relied upon by the workman, which are mostly letters issued by the Management, it is clearly emerging that the disputant workman and others were called to attend an interview for the post of a Driver to be engaged on daily wage basis and the said workman having been selected in the test held on 7.1.1998 was issued appointment letter for the post of "vehicle attendant". Though, he was given appointment being designated as "vehicle attendant", he was driving the vehicles of the Management during his temporary engagement. It is also emerging from the oral as well as documentary evidence of the parties that the disputant workman filed a Writ application initially in the Hon'ble High Court of Orissa and, then filed a case before the Central Administrative Tribunal, Cuttack Bench, when his temporary employment was terminated on the direction of the authority of the 1st Party-Management and the Hon'ble CAT disposed off a misc. case in favour of the disputant workman basing upon the settled principle that one temporary hand cannot be replaced by another temporary hand. Thus, there is overwhelming evidence to show that the disputant workman was initially given employment for six months with a designation of vehicle attendant in-stead of Driver to drive the vehicles of the Management even though he appeared and qualified for a post of Driver. His employment was extended from time to time by the Management. There is no serious dispute to the claim of the workman that he was discharging duty of a Driver with utmost satisfaction of his immediate authority till 5.8.2003. It is also established that he was working continuously for more than 240 days in a year preceding to the date of his alleged removal i.e. 5.8.2003. Having been engaged directly under the supervision of the Management, it can be safely said that employer and employee relationship was existing between the parties. There is also no dispute to the claim of the workman that he was not paid any notice pay and compensation in lieu of his alleged retrenchment/termination as contemplated under section 25-F of the Act.

7. In view of the stand taken by the Management that the disputant workman has abandoned his service on his own accord and he did not report to his duty on 5.8.2003 onwards and the fact that the disputant workman has discharged his onus of proving his employment for a period of more than 240 days continuously preceding to his alleged refusal of employment, burden shifts to the Management to establish that the workman has abandoned his service. There is nothing either in its pleading or evidence to show that the Management had ever noticed the workman to join his duty or conducted any departmental enquiry for his unauthorized absence. It is well settled by the Hon'ble Apex Court in the case of D.K. Yadav –versus- J.M.A. Industries Limited in C.A. o. 166 (NL) of 1993 that right to life enshrined under Article 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardizing not only his/her livelihood but also career and livelihood of dependants. Therefore before taking any action of putting an end to the tenure of employee/workman fair play requires that a reasonable opportunity should be given and domestic enquiry should be conducted complying the principles of natural justice. It has been further held that concerned person should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not only to act judicially but is to act fairly namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of principle of natural justice means that no man should be condemned un-heard to prevent the authority to act arbitrarily affecting the rights of the concerned person. The disputant workman, even being a casual and temporary employee, should have been noticed or given an opportunity to be heard before being presumed to have abandoned his service. Moreover, it is emerging from the pleadings and evidence of the parties that a Driver is presently employed temporarily on contractual basis through out-sourcing to drive the staff car of the Management even though a sanctioned post of Driver is created and the settled principle requires that a temporary hand cannot be replaced by another temporary hand. In the circumstances, an adverse inference is to be drawn against the pleadings of the Management and it can be safely concluded that the workman was refused employment with effect from 6.8.2003 without assigning any reason to him or extending him an opportunity being heard and without notice pay and retrenchment compensation. Moreover, the retrenchment/termination appears to be made as per direction given in Ext.-16. His termination being made whimsically without issue of any show cause notice, charge-sheet or even holding any enquiry for his alleged abandonment of service as well as without payment of notice pay and compensation, the same was clearly illegal as well as unjustified in view of the provisions enumerated in Section 25-F & 25-H of the Act.

8. Coming to the issue of relief to which the disputant workman is entitled to, it is pertinent to mention here that the earlier view of the Hon'ble Apex Court articulated in many decisions is that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and by a catena of decisions in recent past, the Hon'ble Apex Court have clearly laid down that an order of retrenchment/termination passed in violation of Section 25-F although may be set aside, but an award of reinstatement should not, however, be automatically passed. The award of reinstatement with

full back wages in a case where the workman has completed 240 days of work in a year preceding to the date of termination particularly, daily wagers have not been found to be proper by the Hon'ble Apex Court and in-stead compensation has been awarded.

9. It has been strenuously argued by the learned counsel for the disputant workman that in the case at hand the workman was given appointment after his selection in a recruitment test held in proper method. There was no fault on the part of the workman warranting his termination and rather, he was discharging his duties to the utmost satisfaction of his immediate authority. He was refused employment at the instance of the superior authority of the Management, when he made a representation to extend temporary status to his employment. Referring to the judgement of the Hon'ble Apex Court in the case of ONGC Ltd. –versus- Petroleum Coal Labour Union & Ors in Civil Appeal No. 3737 of 2015 and the decision of the Hon'ble Supreme Court passed in the case of State of Karnataka & Ors –versus- M.L. Kesari & Ors. Passed in C.A. No. 6208/2010 the learned counsel for the disputant workman have, further, forcefully submitted that a sanctioned post of Driver has been created in the meanwhile and inspite of that a Driver is appointed on contractual and casual basis and the disputant workman having been replaced by another temporary hand should either be reinstated with full back wages or he may be absorbed against the sanctioned post of Driver for which he is ready to negotiate to forgo his legal entitlements. Keeping in view the principles set out by the Hon'ble Apex Court in the case of State of Maharastra –versus – R.S. Bhonde (2005) 6 SCC 751 it has been argued that having regard to the statutory powers conferred upon the labour court/Industrial Court to grant certain reliefs to the workman, which includes the relief of giving the status of permanency to the contract employees and the Tribunal has authority to give direction for regularization of the service of the workman. On the other hand it has been contended on behalf of the Management that the workman having failed to attend his duty on his own accord, he should not be reinstated and granted back wages. It is also argued that the workman having been otherwise gainfully employed is not entitled to any relief either in the form of compensation or reinstatement. According to him in every case of illegal retrenchment or termination of service, reinstatement is not automatic in view of present trend in the decisions of the Hon'ble Apex Court.

10. Undisputedly, as per the settled principles of the Hon'ble Apex Court relief of reinstatement may not be the natural consequence in a case of termination in violation of provisions of the I.D. Act. It always depends upon the facts and circumstances of each case. The Hon'ble High Court of Orissa in a case between Dananidhi Sahu –Versus- The Presiding Officer, Labour Court, Sambalpur & Others, reported in 2013 (II) OLR 235 and in the case of Divisional Manager, Orissa Forest Development Corporation Ltd., Boudh (C-KL) Division -Versus – Smt. Apasari Bhoi reported in 2014(I) OLR 756 have held that propriety of the direction for reinstatement with full back wages necessitates to take into consideration host of factors, such as, the mode and manner of appointment, nature of employment, length of service, the ground on which the termination has been set aside etc. In the case at hand while disengaging the workman, the Management did not issue any notice to him. No compensation or monetary benefit was offered to him. Another daily wager seems to have been employed in his place through service provider. It cannot be also over-sighted that the disputant workman was issued with appointment letter after becoming successful in a test held in the process of recruitment by inviting names through Employment Exchange, even though, his appointment was purely temporary. The official correspondences relied upon by the disputant workman further reveal that when he made a representation to extend the benefit of temporary status to him, the authority decided to terminate his service for which the workman was forced to take shelter of the Hon'ble High Court as well as the Hon'ble C.A.T., Cuttack Bench for regularization of his service or for granting temporary status. The above fact seems to have been impliedly admitted by the Management in view of statement given by M.W.-1 in para-11 to 15 of his examination-in-chief. Thus, illegal termination was never an issue either before the Hon'ble High Court or before the Hon'ble CAT, Cuttack Bench. It has been already discussed and held in supra from the pleadings and evidence of the parties that after disposal of the case in the CAT, Cuttack Bench, the disputant workman was retrenched in the guise of refusal of employment. In an interim order the Hon'ble C.A.T. appears to have directed the Management to engage the disputant workman in the same terms in which he was previously engaged to drive the vehicles of the Management with effect from 15.4.2002 taking a stand that one temporary hand cannot be replaced by another temporary hand and as a temporary driver has been engaged by the Management through a private agency. In the meanwhile a post of Driver has been sanctioned and created in the office of the Management soon after the alleged refusal of employment to the disputant workman. Though, the Management has argued that the workman is already in gainful employment there is nothing on record or in the evidence of the Management to substantiate the same. In that view of the matter the argument advanced by the learned counsel for the disputant workman for reinstatement of the workman with back wages cannot be rejected out-rightly. It is no doubt that the Tribunal may pass an order substituting an order of reinstatement by awarding compensation but the same has to be based on the justifiably grounds viz. (1) where the industry is closed; (2) where the employee has been superannuated or going to retire shortly and no period of service is left to his credit; (3) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated and (4) when he has lost confidence of the Management to discharge duties. There may be appropriate case on facts which may justify substituting the order of reinstatement by award of compensation, but that has to be supported by some legal and justifiable reasons.

11. In the above backdrops it cannot be over-sighted that **In the case of Deepali Gundu Surwase –versus- Kranti Junior Adhyapak Mahavidyalaya (D.Ed) and Or. (2013) 10 SCC 324** the Hon'ble Apex Court have set out a principle by opining as under:-

“The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer-employee relationship, the latter's source of income gets dried up. Not only the employee concerned, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. The denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the employee concerned and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments.”

12. The Hon'ble Supreme Court in the case of **Hindustan Tin Works (P) Ltd., -versus- Employees of M/s. Hindustan Tin Works Pvt. Ltd., and Ors. Reported in 2 SCC 80** has examined the issue at length and held as follows :-

“It is no more open to debate that in the field of industrial jurisprudence a declaration can be given that the termination of service is bad and the workman continues to be in service. The spectre of common law doctrine that contract of personal service cannot be specifically enforced or the doctrine of mitigation of damages does not haunt in this branch of law. The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the unwarranted litigative activity of the employer. If the employer terminates the service illegally and the termination is motivated as in this case viz. to resist the workmen's demand for revision of wages, the termination may well amount to unfair labour practice. In such circumstances reinstatement being the normal rule, it should be followed with full back wages.

13. The Hon'ble Apex Court in the case of **Surendra Kumar Verma and Ors. –Versus- Central Government Industrial Tribunal-cum-Labour Court, New Delhi and Anr. Reported in (1980) 4 SCC 443** has observed as follow:-

“...Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-a vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums, the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The

court may deny the relief of reinstatement where reinstatement is impossible because the industry is closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted.

14. In the case of Bharat Bank Limited –versus- Employees of Bharat Bank Ltd., (1950) LLJ 921 49 (SC) this aspect was highlighted by the Court observing that :-

“In setting the disputes between the employers and the workmen, the function of the tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace”.

15. However, the powers conferred on the Tribunal is not unbridled in view of the settled principles that the powers of the Industrial Tribunal is conditioned by the subject matter with which it is dealing and also by the existing industrial law and it would not be open to it while dealing with a particular matter before it to overlook the industrial law relating to the matter as laid down by the legislature or by the Apex Court. Thus, it can be safely concluded that fine balancing is required to be achieved while adjudicating a particular dispute keeping in mind that industrial disputes are settled by industrial adjudication on principle of fair play and justice.

16. Taking into consideration the facts and circumstances emerging in the case at hand and keeping the settled principles mentioned above in view I feel that in the instant case reinstatement with back wages is the just and appropriate relief to which the disputant workman is entitled to and as such the Management is directed to reinstate the disputant workman in the capacity in which he was working before his retrenchment/termination on 5.3.2006 along with back wages. The regularization/absorption not being the terms of reference I am not inclined to give any award/direction on such prayer or suggestion of the disputant workman. However, the Management is at liberty to consider such prayer of the disputant workman in case of vacancy of the post keeping in mind that the workman was given appointment after being successful in a recruitment test held amongst the candidates sponsored through Employment Exchange.

17. Reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 929.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, साधन अनुसंधान एवं विकास प्रतिष्ठान, देहरादून व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय सं. II, दिल्ली के पंचाट (संदर्भ संख्या 12/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23.01.2017 को प्राप्त हुआ था।

[सं. एल-42011/153/2012-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 929.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 12/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Director, Instrument Research and Development Establishment, Dehradun and others, and their workman, which was received by the Central Government on 23.01.2017.

[No. L-42011/153/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. II, KARKARDOOMA COURT COMPLEX, DELHI****ID. No. 12/2013**

Sh. Deewan Singh Sajwan,
Through State General Secretary,
CITU office, Local Bus Stand,
Dehradun 248001

...Workman

Versus

1. The Director
Instrument Research & Development Establishment
Raipur Road, Dehradun-248008.
2. Scientific Advisor,
DRDO, Ministry of Defence,
Directorate of Personal,
A-Block, Rajaji Marg,
New Delhi-110105

...Respondent

AWARD

Reference No. L-42011/153/2012-IR(DU) dated 18.02.2013 sent to this Tribunal for adjudication of following questions of determination :-

“Whether the claimant is entitled for IInd ACP in the pay scale of Rs. 4000-6000/- w.e.f 26.09.2007 and MACP w.e.f 15.07.2012 in the pay scale of Rs. 9300-34,800/- is justified or not ? What relief to be granted to the claimant.”

Which was received in this Tribunal on 7.3.2013.

It was registered as I.D case No. 12 of 2013.

Notices to parties were issued for 15.04.2013.

The workman was directed to file claim statement within fifteen days from the date of receipt of notice complete with all relevant documents, list of reliance and witnesses.

General Secretary of workman union filed claim statement on 28.05.2013. Copy of which supplied to Sh. Atul Bhardwaj, Ld. A/R for the management.

On the basis of contents of claim statement it was prayed as follows:-

- i. grant the benefit VIth pay commission on the basis of order dated 25.07.2012 and accordingly allow the pay scale of Rs. 4000-100-6000 on dated 15.07.2006 in the second A.C.P, grade pay of Rs. 2400/- pay scale of Rs. 5200-20200.
- ii. pay may kindly be fixed in the corresponding pay scale of Rs. 4000-100-6000 w.e.f. 16.07.2006 as per VIth pay commission, recommendation and order of the “Government of India as now development due to order 25.07.2012.
- iii. deduct the amount granted due to VIth pay commission benefits with effect from 1.1.2006 to 14.07.2006.

Management filed written statement on 11.10.2013.

On the basis of contents of Written statement. Management prayed as follows:-

“.....it is respectfully prayed that the Hon’ble Tribunal be pleased to dismiss the claim of the workman and give its award accordingly.”

Copy of aforesaid written statement has been supplied to claimant /workman on 11.10.2013 and 28.11.2013 was fixed for rejoinder.

On 28.11.2013 claimant /workman filed rejoinder. Through which claimant /workman re-affirmed the contents of claim statement.

This Tribunal proceeded to decide this case on the basis of questions of determination mentioned in the schedule of reference .

On 13.10.2014 General Secretary of workman union filed affidavit alongwith certain documents in evidence. Copies of which supplied to Ld. A/R for the management and 5.12.2014 was fixed for tendering of affidavit and cross-examination of workman Sh. Deewan Singh Sajwan.

But aforesaid affidavit was tendered on 27.01.2015 and WW1 was cross-examined on 21.09.2015 and 2.11.2015 was fixed for management evidence.

Management examined MW1 Sh. V.K. Arora, on 23.03.2016. Who was cross-examined same day. Thereafter management closed its evidence. Then I fixed 4.4.2016 for arguments.

Ld. A/Rs for the parties filed written arguments then I reserved the Award on 6.10.2016.

In the light of Contentions and counter contentions mentioned in written arguments. I perused the pleadings and evidence of parties on record.

Which shows that claimant /workman sh. Deewan Singh Sajwan, who is working in the same department . Hence he claimed parity with workman/claimant Sh. Rajendra Sharma of I.D. No. 7/2009. On the point of entitlement for Rs. 4000-6000 in the IInd A.C.P. on the basis of Award dated 29.04.2010 passed by Dr. R.K Yadav, Presiding Officer, CGIT. No. 1, Karkardooma Court Complex, Delhi.

It is relevant to mention here that Ld. A/R for the management tried to distinguish the facts of Sh. Rajender Sharma on the ground that Sh. Rajendra Sharma was holder of certificate of matriculation while the certificate submitted by Sh. Deewan Singh Sajwan in this case is a recognition of Hindi Examination . Which cannot be treated as equivalent to the full fledged certificate of Matriculation.

So it is to be determined whether certificate filed by workman /claimant is equivalent to the certificate of Matriculation.

It is relevant to mention here that Government of India through its Notification No.63. On 27.07.2001 granted recognition to Prathama Pariksha equal to Matriculation examination .

It is also relevant to mention here that Central Government on 14.05.2004 and 12.11.2006 extended aforesaid recognition. So I am of considered view that workman /claimant Sh. Deewan Singh Sajwan is entitled for claimed parity.

On the basis of Award dated 29.04.2010 passed by Dr. R.K. Yadav.

Thus demand raised by workman /claimant for seeking 2nd financial up gradation in the scale of Rs. 4000-6000 w.e.f 26.09.2007 and MACP w.e.f. 15.07.2012 in the pay scale of Rs. 9300-24800/- is justified and legal. Management cannot be permitted to treat him differently than the employees, who are similarly situated. According to fundamental rights of equality to the claimant the management is commended to grant him 2nd financial up-gradation in the scale of Rs. 4000-6000 w.e.f 26.09.2007 and MACP w.e.f 15.07.2012 in the pay scale of Rs. 9300-34800/-.

An award is liable to be passed on the same terms. Which is accordingly passed.

Dated:-12.1.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 930.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार अध्यापक पुरातत्व रसायनज्ञ, भारतीय पुरातत्व सर्वेक्षण, भुवनेश्वर के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 10/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.02.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 930.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 10/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in Annexure, in the industrial dispute between the employers in relation to the

Superintending Archeological Survey of India, Bhubaneswar and their workman, which was received by the Central Government on 18.02.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present:

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE MISC. CASE NO. 10/2013

Date of Passing Order – 24th January, 2017

Between:

The President, Archeological Survey of
India Workers Union, Plot No. 32,
Ashok Nagar, Bhubaneswar – 751 009

...Applicant-Union

(And)

The Superintending Archeological Chemist,
Archeological Survey of India,
Science Branch, (Chemical Division),
Block-IV, Toshali Apartment, Satya Nagar,
Bhubaneswar – 751 007

...Opp. Party-Management

Appearances :

Shri Akshya Parida	...	For the Applicant- Union
Shri V.P. Gupta, Asst. Superintendent	...	For the Opp. Party.

ORDER

This order arises out of an application preferred under section 33-A of the Industrial Disputes Act, 1947 by 23 applicants represented through the President, Archaeological Survey of India Workers Union.

2. The case of the applicants, as emerges from their petition, is that the Opp. Party-Management being an organization of Government of India is looking after maintenance and protection of centrally protected monuments situated in different locations of the State. It's science wing is entrusted with chemical conservation and preservation of such monumental works and the above works are being done by specified skilled workmen. The work of the organization was perennial and permanent in nature and as such the Opp. Party recruits/engages such skilled workers for doing conservation and preservation of such monumental structure. According to the applicants being engaged as casual workers by the Opp. Party-Management since long back they were working under the supervision of Science branch of the Opp. Party-Management. Casual labourers of other sections like monuments, horticulture and excavation are being given employment for full month work for years together and accordingly they are receiving 1/30th wages as per the circular of the DoPT, Government of India. As the applicants were not extended such benefits despite they are being engaged as casual workers by the Opp. Party, they raised a dispute before the Asst. Labour Commissioner (Central) which resulted a dispute of reference under I.D. Case No. 91/2012 before this Tribunal. It has been alleged by the applicants that when the above matter was subjudice the Opp. Party-Management refused employment to all of them with an ill intention without taking prior permission of the Tribunal. Such refusal of service being a change in service condition during pendency of the dispute is a purely violation of the provisions of Section 33-A of the Act. Hence, prayer has been made for taking appropriate action against the Opp. Party-Management keeping in view the provisions enumerated under section 33-A of the Act.

3. Denying the allegations raised by the applicants the Opp. Party-Management has submitted its show cause contending that neither the Archaeological Survey of India nor its Science branch is doing any business, trade or undertaking manufacturer aimed to earn profit. The department is only incurring expenditure to preserve National heritage for public interest and the organization is no way involved in any activity of production, supply or distribution of goods. As such, the Opp. Party is not an "Industry" as defined in the Act under section 2(J). It has also denied the

status of the applicants as “workmen” taking a stand that casual labourers are engaged on need basis subject to availability of funds allotted to the organization in each financial year for chemical conservation of protected monuments. Therefore, such work of conservation and preservation was not permanent and perennial in nature. Labourers are being engaged to do such specific work and after completion of that particular/specific work they are being disengaged. It has been pleaded that since funds available with the Opp. Party-Management was exhausted and the particular work of preservation and conservation of monuments were completed there was no need of retaining the applicants to work as casual labourers. There being no “employer and employee” relationship and the applicants not being engaged 240 days continuously preceding to the alleged refusal of employment question does not arise in violating the provisions of Section 33-A of the Act on the part of the Opp. Party-Management.

4. Keeping in view the pleadings of the parties as stated above the only issue for consideration is whether the refusal of employment to applicants during pendency of the proceeding No. 91/2012 amounts to contravention of the provisions of Section 33 of the I.D. Act and to what relief to which the applicants are entitled to?

5. In order to establish their respective case both the parties have relied upon oral evidence and in the process the applicants have examined two of them whereas, the Opp. Party has examined one witness namely Shri Vijay Prasad Gupta to refute the allegations. Besides, the copies of the claim statement of the applicants and written statement and the letter of the reference of the Ministry of Labour, Government of India in connection to I.D. Case No. 91/2012 have been filed from the side of the applicants, whereas the Opp. Party-Management has filed copies of the order of CGIT-cum-Labour Court, Jeipur passed in Misc. Case No. 18/97, order dated 25.9.2003 issued by the Govt. of India, Ministry of Tourism & Culture, and order of the Hon’ble Supreme Court of India in Civil Appeal No. 58/2007 to refute the allegations raised by the applicants.

6. Perusal of the claim statement and the written statement and reference made by the Ministry of Labour, Government of India in connection to I.D. Case No. 91/2012 clearly suggests that applicants raised a dispute alleging that the Opp. Party-Management are engaging 60 numbers of labourers through outsourcing agency for 12 to 15 days in every month without providing them full month’s work as a result of which the applicants who are skilled labourers are unable to get 20 days minimum work in a month. It has been alleged in the claim statement that the Opp. Party did not provide work to the applicants for full month to avoid payment of 1/30th wage as fixed by the circular of the DoPT, Government of India. Thus, it appears from the stand and contentions advanced by the applicants that they raised a dispute on account of not being provided works through-out the month or year inspite of they being engaged in conservation and preservation work for a long period. Simultaneously, the Opp. Party-Management has taken a stand that the applicants are daily wagers and they are being employed as a casual workers on need basis for a specific period and for doing specific work subject to availability of the funds. It is emerging from the evidence of the parties that the original dispute is yet to be disposed off and as such any discussion, analysis or observation at this stage to give a finding on the status of the applicants in the context of definition of “Industry” and “workman” as contemplated under Section 2(j) and 2(s) of the I.D. Act would be prejudicial to either side. Further, it is seen from the cross examination of O.P.W. No. 1 that the applicants are engaged as casual labourers whenever there is a need after filing of the present Misc. Case to which the applicants have not seriously disputed. Hence, it is difficult to accept that the Opp. Party had deliberately refused employment to the applicants on account of they had raised a dispute before the labour machinery. Moreover, the applicants having taken a stand of not providing work through-out the month and raised a dispute before the labour machinery resulting in the reference case No. 91/2012 it cannot be held that failure of the Opp. Party to provide work to the applicants through-out the month or year is a contravention as specified under section 33-A of the Act due to change of service conditions

7. Hence the allegations raised in the application carries no merit and the same stands rejected.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 931.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, बीएसएनएल, ग्रेज हिल्स, कनूर व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 72/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40012/23/2005-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 931.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 72/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Grays Hills, Coonoor and others, and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40012/23/2005-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI**Wednesday, the 22nd March, 2017**Present :** K.P. PRASANNA KUMARI, Presiding Officer**Industrial Dispute No. 72/2005**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and their workman)

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
BSNL Employees Union, R.K. Srinivas Appts.
No. 21, Bharathiyar First Street
Pazhavanthangal
Chennai-600114

AND

1. The General Manager : 2nd Party/1st Respondent
BSNL, Grays Hills
Coonoor
2. The Chief General Manager : 2nd Party/2nd Respondent
BSNL, Tamilnadu Telecom Circle, Annasalai
Chennai-600002
3. The Chairman & Managing Director : 2nd Party/3rd Respondent
BSNL, Statesman House
New Delhi-110001

Appearance :

For the 1st Party/Petitioner Union : M/s K.M. Ramesh, Advocates
For the 2nd Party/Respondents : Sri D. Simon, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40012/23/2005-IR (DU) dated 11.08.2005 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the management of Telecom Department, BSNL, Chennai in non-regularizing/absorbing the services of Sri J. Manikandan and 22 Others (Annexure-A) contract labourers is legal and justified and if not, to what relief the workmen/contract labourers are entitled to?”

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 72/2005 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The employees concerned in the dispute are engaged in house-keeping work. They are working through the alleged Contractor. Even though the Contractors changed often, these workmen continued to work for the Respondents. The very same work is carried out by the permanent employees of the Respondents also. The work done by them is perennial in nature. The alleged Contractors in most of the cases are one of the employees. The concerned workmen cannot be treated as contract labour and have to be treated as part and parcel of the regular service of the Respondents. The concerned workmen are Class-IV employees for whom sponsorship from Employment Exchange is not necessary. The so-called contract system through which the concerned workmen are said to be working is sham. Instead of acting as a model employer, the Respondents engage employees on a cheaper wage under the nomenclature of contract labour and for this reason as well the contract system is only a camouflage. The workmen were always under the control and supervision of the officials of the Respondents. Documents pertaining to the engagement of the workmen are available with the Respondents. The BSNL is an establishment as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. In view of this the concerned workmen have to be made permanent on completion of 480 days work within a period of 24 calendar months. An Award may be passed holding that the concerned workmen are entitled to regular absorption in the service of the Respondents from the date of their joining service together with continuity of service and attendant benefits.

4. The First Respondent has filed Counter Statement on behalf of other Respondents as well, as stated below:

The petitioner has no *locus-standi* to raise the dispute on behalf of the concerned workmen. The BSNL prohibits Unions from taking up the cause of contract labourers. The Respondents have not engaged any workmen directly. Work is given on contract and has been extracted through Contractors. There is no employer-employee relationship between the workmen engaged by the Contractors and the Respondents. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and documents marked as Ext.W1 to Ext.W9. No oral or documentary evidence were tendered on the side of the Respondents.

6. **The point for consideration is:**

Whether the concerned workmen are entitled to absorption as claimed?

The Point

7. The dispute is raised on behalf of 23 workmen whose names are given in Annexure-A to the schedule of reference. As seen from the Annexure the 23 workmen have started to work with the Respondents in different years in between 1996 to 2001.

8. As seen from the Claim Statement the workmen named in the annexure to the schedule of reference are doing the work of house-keeping. Their work is controlled by the Contractor and mainly by the Officers of the Respondents. It is further stated in the Claim Statement that the so-called contract system through which they are engaged is only a camouflage and control and supervision of their work is done by the officials of the Respondents themselves. It is further stated that the BSNL is an establishment coming under Tamil Nadu Industrial Establishment (Conferment to Permanent Status to Workman) Act and the workmen should be made permanent on completion of 480 days of work within a period of 24 calendar months. The Respondents have taken a stand that the concerned workmen are contract labour and there is no employer-employee relationship between them and the Respondents.

9. One of the workman concerned has been examined on behalf of the petitioner. His evidence is for 11 other workmen as well. Though the names of 23 are there in the annexure, WW1 who has given evidence is not concerned with the workmen other than himself and 11 others who are named in the Proof Affidavit filed by him. He has stated that the remaining 11 workmen are no longer interested in the dispute. According to him, himself and 11 workmen who continue to have interest in the dispute are working in the General Manager's Office of BSNL at Coonoor, Divisional Engineer (Maintenance) at Ooty and DE (Maintenance) at Kothagiri. He has further stated that himself and 11 other workmen are doing house-keeping, clerical work, computer maintenance, general service, line work and cable joining in the Offices referred to earlier. He has further stated that all of them have completed 480 days of continuous service in a period of 24 calendar months long ago and should be deemed to have attained permanent status.

10. WW1 has further stated in his affidavit that though himself and other workmen are directly working under the Respondents, a make believe contract system has been introduced. The so-called Contractor had never controlled them but wages are paid to them through a name-lender Contractor. It is also stated by WW1 that all of them are working in sanctioned posts and the work done by them is perennial in nature.

11. Though WW1 has given affidavit on behalf of himself and 11 others, the documents produced pertain to only a few. He has admitted during his cross-examination that documents produced are only in respect of himself, Anand,

Prakash, Kiran Kumar and Satish. So materials are not at all available regarding those 6 others for whom also Proof Affidavit has been filed.

12. Now it could be seen what are the documents produced on behalf of some of the workmen. Ext.W1 pertains to WW1 himself. This is copy of a portion of the Bill Collection Receipt Book. However, this is of the year 2011 and 2012, long after the dispute has been raised. Apart from this, no other document has been produced on behalf of WW1. Even in his affidavit he has not stated on which date he has started to work for the Respondents. He has stated during his cross-examination that he has joined in the Telephone Exchange at Thengumarahada on 03.10.2009. However, this case put forth during cross-examination is not proved by any acceptable evidence. There is no evidence as to the days on which he has worked before the dispute was raised.

13. Ext.W2 is a statement containing the names of workmen who had been working at Kothagiri in April 2015. This document also is not of any use in establishing the case of the petitioner for the reason that this is of a recent period and could not establish the case set up in the Claim Statement.

14. Ext.W3 is a certificate issued by a Sub-Divisional Engineer of Coonoor stating that M. Anand who is one named in the affidavit has been working in Computer Section from 04.06.2001 to 10.06.2004. The certificate is seen issued on 26.06.2004. If the certificate is taken into account he was not working there after 10.06.2004. If there was some supportive evidence to justify Ext.W3 certificate it would have been of some use. However, no documents other than two Gate Passes of 2004 included in Ext.W4 are available to show that Anand has been working in the establishment before the dispute was raised. Other than this, there is nothing to show on which date he has started to work or upto which date he had worked. Ext.W3 would not show if he had been working continuously during the period mentioned in the certificate. The other documents pertaining to Anand are of the period subsequent to the raising of the dispute. The application presented before the Assistant Commissioner of Labour by which the dispute has been raised is not produced. However, from the schedule of reference it could be deciphered to have been raised in early 2005. Ext.W5-Stock Register in which the name of Anand appears is of the year 2014.

15. Ext.W6 containing a series of diesel bills and Ext.W7, extract from the local letter dispatch Peon Book showing the name of Kiran Kumar also are of the period subsequent to the raising of the dispute. So also Ext.W8, extract from the local letter dispatch Peon Book in respect of Prakash and Ext.W9, extract from Bill Collection Receipt Book in respect of Satish are of subsequent period. So these documents are not of any help to the concerned workmen.

16. There is indication in the Claim Statement that the workers are employed on contract basis. It is clear even from the Proof Affidavit that payment was being made through a Contractor though according to WW1 it was only a name-lender. The petitioner has not produced any document to show that the Respondents have been making any direct payment to the concerned workmen. Apart from the version in the Proof Affidavit there is nothing to show that the control and supervision is by the Respondents directly also. Even assuming that the case of workmen that they have completed 480 days within two calendar years before the dispute was raised, they would not be entitled to any relief for the reason that even according to them they were working through the Contractor, though a nominal one. So the concerned workmen are not entitled to any relief.

In view of the discussion above, the reference is answered against the petitioner.

An award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri S. Varadharajan
For the 2nd Party/Respondents : Nil

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	June 2011 To Sept.2012	Bill Collection Receipt Book JNo.431 (S.Varadharajan) (W1 Series)
Ext.W2	April,2015	Statement Containing the Names of workmen with No. of days worked and the Amount paid to them (2 Series)

Ext.W3	26.06.2004	Letter issued by Sub-Division Engineer, (Computers) O/o, GM, Telecom, Coonoor (M.Anand) (W3 Series)
Ext.W4	-	Gate pass issued to M.Anand (17 Nos) (4 Series)
Ext.W5	-	Stock Register 4 Nos (M.Anand) (5 Series)
Ext.W6	-	Diesel Bills for filling Department Vehicle (W6 Series)
Ext.W7	-	Extracts from Local letter dispatch peon Book (10 Nos) (S. Kiran Kumar) W7 Series
Ext.W8	-	Extracts from Local letter dispatch peon Book (3 Nos) (L. Prakash) W8 Series
Ext.W9	-	Extracts from Bill Collection Receipt Book (V. Sathish) (W9 Series)

On the Management's side

Ext.No.	Date	Description
---------	------	-------------

	Nil	
--	-----	--

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 932.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, बीएसएनएल, कुमाकोणम और अन्य एवं उनके कर्मचारी के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 23/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/21/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 932.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 23/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Kumakonam and others, and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/21/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 22nd March, 2017**Present :** K.P. PRASANNA KUMARI, Presiding Officer**Industrial Dispute No. 23/2003**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Two Others and their workman)

BETWEEN :

The Circle Secretary BSNL Employees Union No. 3/71, 4 th Street, Raghava Nagar, Madipakkam Chennai-600091	:	1 st Party/Petitioner Union
---	---	--

AND

1. The General Manager BSNL, Kumbakonam	:	2 nd Party/1 st Respondent
--	---	--

2. The Chairman & Managing Director : 2nd Party/2nd Respondent
BSNL, Sanchar Bhawan
New Delhi-110001
3. The Chief General Manager : 2nd Party/3rd Respondent
BSNL, Tamil Nadu Circle
Anna Salai
Chennai-600002

Appearance:

- For the 1st Party/Petitioner Union : M/s K.M. Ramesh, Advocates
- For the 2nd Party/Respondents : Sri D. Simon, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40011/21/2002-IR (DU) dated 07.01.2003 and Corrigendum dated 01.01.2004 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the non-absorption of the casual employees as per annexure as claimed by the BSNL Employees Union is legal and justified? If not, to what relief the workmen are entitled?”

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 23/2003 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a registered trade union having substantial number of permanent workmen working in BSNL as its members. The workmen concerned in the dispute are doing the work of house-keeping and delivery of telegrams. They are working directly under the control and supervision of BSNL. They are doing the very same work carried out by the permanent employees of the Telecom Department. The work done by them is perennial in nature. The workmen employed to do the aforesaid functions cannot be treated as contract labour. The so-called contract system is sham. The administrative control of the workmen remains with the telecom department. The alleged contractors are regular staff of the Respondents. There are regular sanctioned posts for regularizing the workmen concerned in the case. The BSNL is an establishment as per the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned workmen have to be made permanent on completion of 480 days in a period of 24 calendar months. An order may be passed directing to regularize and absorb the concerned workmen in the service of the Respondents from the date of their joining in service together with continuity of service and other attendant benefits.

4. The Respondents have filed Counter Statement contending as below:

The petitioner has no *locus-standi* to espouse the cause of persons who are not employees of the Respondents. The Contractors have not been impleaded as parties. The dispute is liable to be dismissed for non-joinder of necessary parties. The claim of the petitioner that the employees are doing same work as that of the regular employees, that the work done by them is perennial in nature, that there is direct control and supervision of the workmen by the Respondents, that the Contractors are mainly Offices of the Respondents, etc. are incorrect. It is admitted by the petitioner that the concerned workmen are contract labourers. So there is no question of absorption or regularization. The case of the petitioner that the contract is sham is not correct. There is no camouflage as alleged. The Respondents never exercised control or supervision over the concerned workmen. The Respondents are not organizing the work of contract labour. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and WW2 and MW1 and also documents marked as Ext.W1 to Ext.W17 and Ext.M1 to Ext.M12.

6. **The point for consideration is:**

“Whether the concerned workmen are entitled to regularization and absorption as claimed?”

The Point

7. The Petitioner Union has raised the dispute on behalf of 9 workmen whose names and other details are given in the annexure to the schedule of reference. The case of the petitioner is that they are doing the work of house-keeping and delivery of telegrams. It is further stated that the contract system through which they are allegedly working is a sham one. The concerned workmen are said to be doing work which is perennial in nature just as in the case of regular

workmen of the Respondents. It is also stated by the petitioner that all the workmen have completed more than 480 days in the service of the Respondents within a period of 24 calendar months and for this reason they are entitled to be given permanent status in the service of the Respondents. Thus the petitioner claims regularization and absorption of the concerned workmen on the ground that the contract system through which they are working is a sham one and also on the basis that they are entitled to be conferred permanent status as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act.

8. One of the workman named in the annexure to the schedule of reference has given evidence for himself and on behalf of other workmen named in the annexure. His Proof Affidavit is a replica of the Claim Statement. The documents relied upon by the petitioner are also proved through this witness. Apart from the evidence of WW1 there is also the evidence of WW2, the Circle Treasure of the Petitioner Union. But his evidence is intended only to show that the petitioner has got *locus standi* to espouse the cause of the workmen involved in the dispute.

9. It is to be seen from the documents whether the case of the petitioner that the concerned workmen had been working with the Respondents for a long time is true. The annexure to the schedule of references gives the details of the concerned workmen including the date of their joining the establishment. They are stated to have been working from 1994, 1995, 1997, etc.

10. Ext.W2 is described as the wages register in respect of some of the employees. Page-2 of this document contains the name of WW1, Srinivasan, Kasilingam and Balachandran whose names are in the annexure to the schedule of reference along with two other names. This document is of August 1995. There is no case at all that this is a false document. It is very much clear from this document that these workmen must have been working in the establishment at least from August 1995. The document contains the details of telegrams delivered by these workmen along with the payment to be made to them. The next page of the document which is of December 1995 also contains such details. This is followed by details of May 1996 regarding all the three workmen. Such details of June 1996, July 1996, August 1996, February 1997, etc. are also available. Ext.W6 contains the Identity Cards of WW1, Balachandran and also Kasilingam. However, these do not bear any date. It could not be deciphered from these when these were issued. Ext.W8 (Page-1) gives the names of Kasilingam and Balachandran. This is of April 1994 revealing that these workmen must have been working in the establishment even from 1994. The document gives the details of telegrams delivered and amount payable. The next page is in respect of May 1994. Page-100 of the document gives the details in respect of the same workmen for the month of January 1996. The details in respect of February to September 1996 also are available in the subsequent pages. Ext.W10 is a performance certificate issued to WW1 in January 1998 by the Officer-in-Charge of Telecom Centre, Sirkazhi. However, so far as Balachandran and Kasilingam are concerned there is nothing to show that they were continuing in the establishment even at the time when the reference was made. There is only the oral evidence by WW1 in this respect. These workmen did not come forward to state that they are still working in the establishment. However, so far as WW1 is concerned there is his own evidence to the effect that he is still working as Telegraph Counter Official at present and also looking after STD Booth collection. This is proved by the document marked as Ext.W13 also. This is the document pertaining to Telegrams and STD Booth Collection. In this document of 2004 and 2005 the name of WW1 appears in all the pages. So it is more than clear that WW1 was in the establishment at the time of reference and continued to be in the establishment after the reference also. It can be assumed from the documents produced that WW1 was in the establishment starting from 1994. He is to be assumed to have been working there continuously. The payments revealed by Ext.W2 and other documents referred to are seen to be paid by the Respondents directly and not through any Contractor. So it is very much clear that Respondents had directly employed WW1 as Telegraph Messenger and he is still working in the establishment in a position connected to this work.

11. What is the evidence available in respect of other workmen? K. Parthiban is the first name appearing in the annexure to the schedule of reference. As per the annexure he has started to work in the establishment in the year 1996. Ext.W7 contains a series of Messenger Delivery Slips. Page-13 contains the name of Parthiban. However, this is of the year 2001. His name is there in a few more pages of the document, but all of 2001. In Ext.W8 which is described as Delivered Telegram Calculation Sheet also the name of this workman appears occasionally for the year 2001. A few pages of Ext.W9 would show that he was there in 1998 also. Page-204 of this document which is of September 1998 showing the details of payment of coolie charges for delivery of telegrams shows his name as well. Page-208 which is of February 1999, Page-209 which is of March 1999 and Page-211 which is of April 1999 also contains his name. He seems to have received amount from the establishment in these months. Ext.W12 showing the strength of the staff on the role of the Telegraph Office at Kumbakonam given in June 2002 gives the name of Parthiban as one among contingency/contract workers. So it seems this workman was in the establishment even at the time of reference. Thus though his entry in the establishment as seen from the documents is only in 1998 he seems to have continued and as stated by WW1 still continuing. He was also receiving payment directly from the establishment. The names of Senthil Kumar and Ramalingam are found in Ext.W9 which is Delivered Telegram Payment Vouchers showing that these workmen were in the establishment in 1995. The name of Ramalingam is there in the vouchers of 1996 also. Page-208 to Page-217 reveals his presence in the establishment up to November 1999. The names of both Senthil Kumar and

Ramalingam appear along with others in Ext.W12 showing the sanctioned strength. So it is apparent that they were there all along from 1995 and remained even at a time after the dispute was raised.

12. Ext.W4 Telegraph Daily Receipt of Messengers contains the name of A. Sundaram as well. Page-57 is of February 2001. Ext.W9 bears his name also showing that he was there in 1999. Ext.W11 is a memo issued to him in 1999. His name is there in Ext.W12 showing the sanctioned strength as one of contingency/contract workers engaged for delivering on coolie basis. So his presence in the establishment from 1999 and even after the dispute is raised is proved by the documents produced.

13. Ext.W9 shows that V. Srinivasan was also in the establishment in 1996. Page-188 shows that he was there in the establishment even in March 1996. Page-217 shows that he was there in November 1999 also. Ext.W12, among other workmen shows the name of V. Srinivasan also as one of the Telegram Messengers.

14. So far as Murugan is concerned his name does not appear anywhere except in Ext.W12 where he is shown as engaged for Sweeping, Water Carrying, etc. In the annexure his entry in the establishment is shown as May 1997. However, no documents are available to justify this. Ext.W12 would only show that he was there in 2002 after the dispute was raised. The case that he has been working in the establishment even from 1997 is not established.

15. As already found WW1 who is S.No.5 in the annexure to the schedule of reference has been working in the establishment from the year 1994. Parthiban, S.No. 1 had been working from 1998. Ramalingam, S.No.2 & Senthil Kumar, S.No. 9 have been working from 1995. V.Srinivasan, S.No. 4 has been working from 1996 and A. Sundaram, S.No. 3 had been working from 1999. Apparently, all of them were being directly paid by the establishment. The documents already discussed reveal this. Though it is claimed by the Respondents that the concerned workers are working as contractual labourers, no documents are produced by the Respondents to prove this. The Respondents have stated that the petitioner has admitted that the concerned workmen are working under contractual agency. However, the case of the petitioner is that they were always under the direct supervision of the Respondents and they do not know anything about the contractual system. They have further stated that even if there is any contract it is for the Respondents to reveal the same. According to the petitioner, even in cases where there are Contractors they are all employees of the Respondent themselves. When the available evidence reveals that the concerned workmen are directly paid by the Respondents and they were under the control of the Respondents, the burden shifts on the Respondents to disprove the case that they were working directly and not under the Contractor and there was no direct employer-employee relationship between them and the Respondents. There is a case for the Respondents that there was ban on engaging casual workers directly after 30.03.1985 as revealed by Ext.M2 order of the Government. In spite of this order direct engagement and payment is seen made by the Respondents. The contract if any is to be treated as sham.

16. The counsel for the petitioner has referred to the decision of the Apex Court in **WORKMEN OF FOOD CORPORATION OF INDIA VS. FOOD CORPORATION OF INDIA** reported in AIR 1985 SC 670 where it was held that a person who is under direct employment cannot be converted to a contract employee. It was a case where the Food Corporation had engaged several workmen directly but subsequently a Contractor was inducted and these workmen were brought under him. The dictum was laid down in this context. The petitioner had raised the dispute not long after the so-called contractual system was brought into effect. Apparently, the Respondents without notice to the concerned workmen had probably brought in a contract system. But they have not proved it properly. The Apex Court has stated in **HUSSAINBHAI VS. ALATH FACTORY THOZHILALI UNION** reported in AIR 1978 SC 1410 that the presence of intermediate Contractors with whom the workers have immediate or direct relationship *excontractu* is of no consequence when on lifting the veil or looking at the conspectus of factors governing employment will discern the naked truth, though draped in different perfect arrangement, that the real employer is the Management and not the immediate Contractor. In the present case, on removal of the veil it is very much clear that the contract system if any under which the workmen were working was only a sham and nominal one and they were really working under the Respondents itself.

17. There is a contention for the Respondents in the Counter Statement that the Union has no capacity to represent the contract workmen. MW1, the Divisional Engineer examined on behalf of the Respondents has stated during his evidence that the casual labourers could not have become members of the Union. Ext.M3 circular is produced to prove this. MW1 has also stated that the concerned workmen who are not even casual labourers cannot become members of the Union and for this reason the Union is not competent to represent them in this dispute also. The petitioner has examined WW2, the Treasurer of the Union to meet this contention. As seen from his evidence there were workmen of the Respondents. However, these Unions got merged with the Petitioner Union. In the Working Committee Meeting of the Union it was decided to espouse the cause of the concerned workmen. The resolution of the Union is marked as Ext.W10. When such a resolution is taken the Petitioner Union is quite competent to raise the dispute on behalf of the concerned workmen. So the contention that the Union is not competent to espouse the cause of

the workmen will not hold good. Those workmen who have proved their eligibility by establishing that they were working with the Respondent for a long time is entitled to relief.

18. In view of the finding that the contractual system, if any in respect of S.Nos. 1, 2, 3, 4, 5 and 9 is sham they are entitled to be absorbed in the service of the Respondents. Relief can be moulded on the basis of the period for which the concerned workmen had worked. WW1, R. Srinivasan, S.No. 5 who had been working from 1994, Ramalingam, S.No. 2 and Senthil Kumar, S.No. 9 who have been working from 1995 and V. Srinivasan, S.No. 4 who had been working from 1996 can be absorbed in the establishment from the date on which the dispute was raised, considering the long period of their service. S.No. 1, Parthiban and S.No. 3, A. Sundar can be absorbed from the date of the Award. Others named in the annexure to the schedule of reference are not entitled to any relief.

19. On the basis of discussion above an Award is passed as below:

Ramalingam, S.No. 2, V. Srinivasan, S.No. 4, R. Srinivasan (WW1), S.No. 5, and Senthil Kumar, S.No. 9 named in the annexure to the schedule of reference shall be deemed to be absorbed and regularized in the service of the Respondents in the then position with effect from 18.01.2002 the date on which the dispute was raised. They are entitled to the difference in the salary due to them on account of such absorption and regularization. The same shall be paid within two months of the publication of the Award. In default the amount will carry interest at the rate of 6% per annum from the date of the Award.

Parthiban, S.No. 1 and A. Sundaram, S.No. 3 shall be absorbed and regularized in the service of the Respondents from the date of the Award.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri R. Srinivasan

WW2, Sri K. Srinivasan

For the 2nd Party/Respondents : MW1, Sri A. Selvaraj

Documents Marked:

On the Petitioner's side

Ext.No.	Date	Description
Ext.W1	-	Annexure to 2(k) dispute
Ext.W2	-	Available wages register
Ext.W3	-	ACG-17
Ext.W4	-	Telegraph daily report
Ext.W5	-	Union Bye-Laws
Ext.W6	-	Identity Card
Ext.W7(series)	-	Messenger's delivery slip
Ext.W8	-	Deliver telegram calculation sheet
Ext.W9	-	Deliver telegrams payment voucher
Ext.W10	-	Performance certificate of R. Srinivasan
Ext.W11	-	Memo sheet of Sundaram
Ext.W12	-	Sanctioned strength of BSNL at Kumbakonam
Ext.W13	-	Telegrams and STD Booth collection by the concerned workmen – countersigned by the Officers
Ext.W14	-	Phonogram message received via phone and registered entry particulars charge report

Ext.W15	-	Bye-Laws of the Union
Ext.W16	30/31 Oct. 2001	Resolution of the Union.
Ext.W17	21.03.2006	Lok Sabha Admitted Provisional Starred Question Dy. No. 10145 for 19.12.2005 by Sri Ganesh Singh regarding regularization of contract workers.

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours.
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	29.09.2005	Award of Tender for the service contract of House keeping Works for Zone-1 GM (Office) Kumbakonam (Main and Annex Building) of CRDA SSA, KMB for the year 2005-2006-reg.
Ext.M10	27.03.2003	The Contract Labour (Regulation & Abolition) Act, 1970 and Central Rules, 1971 made thereunder Grant of Certificate Registration-reg.
Ext.M11	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group "D" employees category.
Ext.M12	01.07.2006	Model Bill for Labours

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 933.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, बीएसएनएल और अन्य, विरुधुनगर एवं उनके कर्मचारी के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 99/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40012/209/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 933.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 99/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom, BSNL and others, Virudhunagar and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40012/209/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**Wednesday, the 22nd March, 2017**Present : K.P. PRASANNA KUMARI**, Presiding Officer**Industrial Dispute No. 99/2003**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Two Others and their workman)

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
BSNL Employees Union
No. 3/71, 4th Street, Raghava Nagar
Madipakkam
Chennai-600091

AND

1. The General Manager, Telecom : 2nd Party/1st Respondent
BSNL
Virudhunagar - 626001
2. The Chief General Manager : 2nd Party/2nd Respondent
BSNL Tamilnadu Circle
Anna Salai
Chennai-600002
3. The Chairman-cum-Managing Director : 2nd Party/3rd Respondent
BSNL, Sanchar Bhawan
New Delhi-110001

Appearance:

For the 1st Party/Petitioner Union : M/s K.M. Ramesh, Advocates
For the 2nd Party/Respondents : Sri P. Srinivasan, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40012/209/2002-IR (DU) dated 28.05.2003 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the regularization of Sri K. Mani and 33 Other workmen are justified, if so, the relief they are entitled to?”

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 99/2003 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.
3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a Registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The dispute is raised on behalf of workmen working in the Office of BSNL, Virudhunagar. They are doing Cable Jointing and Line Work, etc. These workmen are working directly under the control and supervision of BSNL. They are doing the very same work carried out by the permanent employees of the Department. The work done by them is perennial in nature. The workmen cannot be treated as contract labour but have to be treated as part and parcel of the regular service of the Department. All the workmen concerned in the dispute are Class-IV employees for which sponsorship from Employment Exchange is not required. The work performed by them are essential. The so-called contract system is a sham one. The overall control of the workmen including administrative control remained with the Department. The alleged Contractors are regular staff of the Department. They engage the workers, supervise the work, take their attendance and claim and pay their wages. There are regular sanctioned posts for regularizing the workmen concerned in the case. The BSNL is an establishment as per Tamil Nadu Industrial Establishment

(Conferment of Permanent Status to Workmen) Act. The concerned workmen having completed 480 days of work in a period of 24 calendar months also should be made permanent. An Award may be passed holding that the workmen are entitled to regular absorption in the service of the establishment from the date of their joining, together with continuity of service and attendant benefits.

4. The Respondents has filed Counter Statement contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of BSNL. The petitioner is not a recognized union. The subject matter of the claim does not relate to the service conditions of any of the employees of BSNL. As such the claim is not maintainable. The Contractors have not been impleaded as parties. So the dispute is bad for non-joinder of necessary parties. It is not correct to state that the concerned workmen are doing work of the same nature as done by regular employees, that the work is perennial in nature, that there is direct control and supervision by the Respondents, that the Contractors are the Officers of BSNL, etc. Though the petitioner has admitted that the workmen are contract labourers they are described as casual labourers doing the work of Class-IV employees. These are mutually inconsistent pleas. In the case of contract labourers there is no supervision or control by the principal employers. The petitioner having admitted that the concerned workmen are contract labourers, the question of their absorption or regularization do not arise. The Respondents have not been prevented from engaging contract labour. The Respondents do not know about the details of the concerned workmen. It is the Contractors who do the work and they only know about the details of their workmen. If the workmen have worked for more than 480 days they are to claim permanency with the Contractors and not with the Respondents. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and WW2 and MW1 and documents marked as Ext.W1 to Ext.W11 and Ext.M1 to Ext.M10.

6. **The point for consideration is:**

Whether the concerned workmen are entitled to regularization as claimed?

The Point

7. The petitioner has raised the dispute on behalf of 34 workmen who are said to be doing Cable Work in the Office of BSNL at Virudhunagar. According to the petitioner all these workmen are working directly under the control and supervision of BSNL. The work performed by the workmen are said to be essential and perennial in nature. The contract system under which the workers are is said to be a camouflage. It is stated that the Contractors are regular employees of the department itself. The petitioner has claimed regularization of the concerned workmen on the ground that the contract is sham and also on the basis that having completed 480 days of work continuously within a period of 24 calendar months they are entitled to be made permanent under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act also.

8. Munusamy, one of the workmen involved in the dispute has been examined as WW1. The other witness examined by the petitioner in the case is the Circle Treasurer of the Union. His evidence is intended to establish that the petitioner union has got the locus-standi to espouse the cause of the concerned workmen. The Asstt. General Manager of Virudhunagar SSA has been examined as MW1.

9. WW1 has stated in the affidavit in lieu of Chief Examination filed by him that he is giving evidence on behalf of all the 34 workmen including him involved in the dispute. His affidavit is in tune with the case set up in the Claim Statement. He has stated that the case advanced by the Respondents that they are contract workmen is not correct. The so-called contract system put forth by the Respondents is said to be sham and nominal. WW1 has given the names of the officials who are said to have extracted work from them. WW1 has claimed that all the workmen are entitled to be regularized in the service of BSNL.

10. Though the dispute is raised on behalf of 34 workmen, no one other than WW1 has come forward to give evidence in the case. Apart from that is the fact that the documents produced and marked through WW1 are only in respect of a few more persons other than that of WW1.

11. It is to be seen what is the case revealed from the documents. Ext.W1 is a copy of the certificate issued by an official of Rajapalayam stating that the four workmen named in the certificate are working in the Outdoor Station, Rajapalayam. However, this does not reveal any date. It is not possible to know on which date this was issued. On which period the workmen were working could not be found out from the certificate. Ext.W2 is described as Sample Muster Rolls of Jayakumar, Gate Pass of Munusamy and working particulars of some of the employees. In the first three pages of the document the name Jayakumar is found written. In the column for signature of Paying Officer there is the seal of the office with some signature but one does not know whose signature is that. In the 5th page there is a certificate stating that Ponnusamy, one of the workman had worked for 16 days in March 1987. The date of the document was shown as 1999 but is seen subsequently corrected as 1991. The subsequent pages contain some details of

work done for the period from 02.09.1994 but none of these contain anything to show who prepared these details or whether any of the officials have signed the same. It could not be deciphered whether this is a document maintained by the Respondents. The names of different workmen appear in these documents. It could not be seen which workman has worked for which period, etc. Ext.W3 is described as the working particulars in respect of WW1. This also contains description of the details of work starting from 01.01.2000. It could not be made out from this document also that it is an authentic one. There is no seal of the department in any of these. It could not be made out from the document if this is in respect of WW1 at all. His name does not appear in any of the pages. Though there is a signature at the bottom of every page, whose signature is this cannot be ascertained. Apart from this is the fact that this document starts from January 2000, only a year before the dispute was raised. Ext.W4 is described as the working particulars of Ponnusamy. The reasons given for rejection of the other documents are applicable to this also. This of course contains the name of the workman but there is no evidence as to who has prepared the document or which Officer has signed it. Ext.W5 described as a document in respect of Mayandi and Ext.W6 in respect of Jayakumar also are documents of the same nature. Nothing could be made out of these documents, in the absence of acceptable evidence. Ext.W7 is said to be working particulars in respect of Thennarasu and Ext.W8 is described as working particulars in respect of Pandi, both starting from the year 1999. On the basis of these documents alone it could not be made out whether the persons described in the documents were working for the Respondents continuously and were getting wages directly from them. It is also not known whether they were working through Contractors but were under the direct supervision and control of the Respondents. In the absence of acceptable evidence, the case put forth by the petitioner in respect of all the workmen including those named in the documents has to be rejected.

On the basis of the above discussion the reference is answered against the petitioner. An Award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri R. Munisamy
WW2, Sri K. Srinivasan
For the 2nd Party/Respondents : MW1, Sri M.Balasubramaniam

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	-	Service Certificate
Ext.W2	-	Working Particulars
Ext.W3	2000 2001 2002 2003	Working particulars of R. Munisamy for the period from 01.01.200 to 28.09.2003 signed by A. Kannan, TM.
Ext.W4	1998	Working particulars of V.Ponnusasamy
Ext.W5	2002	Working particulars of K. Mayandi
Ext.W6	1998	Working particulars of P.Jayakumar
Ext.W7	1999 2000 2001 2002 2003	Working particulars of K. Thennarasu
Ext.W8	1999 2001 2002 2003	Working particulars of S. Pandi
Ext.W9	-	Bye-laws of the Union
Ext.W10	30/31 Oct'2001	Resolution of the union

Ext.W11 21.03.2006 Lok Sabha Admitted Provisional Starred Question Dy. NO.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularisation of contract Workers.

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours.
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	17.10.2005	Copy of the agreement entered into between BSNL and M/s. Kalai Industrial Security Services
Ext.M10	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group "D" employees category.

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 934.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, बीएसएनएल, विरुधुनगर व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 41/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/39/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 934.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 41/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom, BSNL, Virudhunagar and others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/39/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 22nd March, 2017

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 41/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Two Others and their workman)

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
 BSNL Employees Union
 No. 408, 4th Street, Raghava Nagar
 Madipakkam
 Chennai-600091

AND

1. The General Manager, Telecom : 2nd Party/1st Respondent
 BSNL
 Virudhunagar - 626001
2. The Chief General Manager : 2nd Party/2nd Respondent
 BSNL Tamilnadu Circle
 Anna Salai
 Chennai-600002
3. The Chairman-cum-Managing Director : 2nd Party/3rd Respondent
 BSNL, Sanchar Bhawan
 New Delhi-110001

Appearance:

For the 1st Party/Petitioner Union : M/s K.M. Ramesh, Advocates
 For the 2nd Party/Respondents : Sri P. Srinivasan, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40011/39/2002-IR (DU) dated 20.02.2003 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the employment of Sri A. Thangaraj, Casual Worker has to be regularized by the management of BSNL, Chennai / Virudhunagar? If so, to what relief the workman is entitled to?”

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 41/2003 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.
3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a Registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The dispute is raised on behalf of a workman working in the Office of BSNL, Virudhunagar. He is working as Driver. The workman is working directly under the control and supervision of BSNL. He is doing the very same work carried out by the permanent employees of the Department. The work done by him is perennial in nature. The workman cannot be treated as contract labour but have to be treated as part and parcel of the regular service of the Department. The workman concerned in the dispute is a Class-IV employee the job for which sponsorship from Employment Exchange is not required. The work performed by him is essential. The so-called contract system is a sham one. The overall control of the workman including administrative control remained with the Department. The alleged Contractors are regular staff of the Department. They engage the workers, supervise the work, take their attendance and claim and pay their wages. There are regular sanctioned posts for regularizing the workmen concerned in the case. The BSNL is an establishment as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned workmen having completed 480 days of work in a period of 24 calendar months should be made permanent. An Award may be passed holding that the workman is entitled to regular absorption in the service of the establishment from the date of his joining, together with continuity of service and attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of BSNL. The petitioner is not a recognized union. The subject matter of the claim does not relate to the service conditions of any of the employees of BSNL. As such the claim is not maintainable. The Contractor has not been impleaded as party. So the dispute is bad for non-joinder of necessary party. It is not correct to state that the concerned workman is doing work of the same nature as done by regular employees, that the work is perennial in nature, that there is direct control and supervision by the Respondents, that the Contractors are the Officers of BSNL, etc. Though the petitioner has admitted

that the workman is contract labourer he is described as casual labourer doing the work of Class-IV employees. These are mutually inconsistent pleas. In the case of contract labourers there is no supervision or control by the principal employers. The petitioner having admitted that the concerned workman is contract labourer, the question of his regularization does not arise. The Respondents have not been prevented from engaging contract labour. The Respondents do not know about the details of the concerned workman. It is the Contractors who do the work and they only know about the details of their workman. If the workman had worked for more than 480 days he is to claim permanency with the Contractors and not with the Respondents. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1, WW2 and MW1 and documents marked as Ext.W1 to Ext.W7 and Ext.M1 to Ext.M10.

6. **The point for consideration is:**

Whether the concerned workman is entitled to regularization as claimed?

The Point

7. The Petitioner Union has raised the dispute on behalf of one workman who is said to have worked as Driver in the Office of BSNL at Virudhunagar. According to the petitioner, the so-called contract system through which the concerned workman was working is only a camouflage. The control and supervision of the workman rested with the officials of the Respondents themselves. The workman is said to have been doing work that is perennial in nature and similar to that done by similar regular workmen of the establishment. The petitioner has claimed absorption of the concerned workman in the establishment on the basis that the so-called contract system is sham and also on the basis that he is entitled to permanency based on Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, he having completed more than 480 days in a period of 24 calendar months.

8. The concerned workman has been examined as WW1. WW1 has stated in the Chief Affidavit filed by him that he has joined the Department of Telecom, the erstwhile department as a casual driver at Sivakasi. He was driving the vehicle for a Deputy Engineer of the establishment. Subsequently, he started to drive vehicle for Balasubramaniam, SDO, Telecom and used to sign the Log Book also. Later he was driving the vehicle for several Officers. According to him he had been denied employment from 2002. He has further stated that the case of he Respondents that he was a contract workman is not correct. He was not appointed by the Contractors. He does not know who the Contractors are. He was directly under the control of Department of Telecom initially and subsequently under BSNL. He was paid wages weekly, sometimes fortnightly and at times monthly also. He has further stated that only to circumvent the law one of the staff of BSNL was named as Contractor. This was done without his knowledge. According to him he is entitled to be absorbed in the establishment.

9. In his affidavit WW1 has not stated specifically on which date he has started to work for the Department of Telecom. During his cross-examination he has stated that he joined the department as a casual driver on 17.02.1997. The petitioner has produced certain documents to establish the case. Ext.W1 contains three wage receipts, issued by WW1 all dated 04.04.1993. So it is clear that he was there even during 1993. Ext.W2 is a copy of a letter to Regional Transport Officer authorizing WW1 to sign in a particular form. This is of the year 2001. Ext.W3 is a document described as working particulars showing the date of work, the kilometer the vehicle has run, the signature of the concerned driver, etc. This shows that WW1 continued to be in the establishment on 01.01.1999 on which date the documents starts. The details of work upto 30.04.2002 are available in this document. There is no case for the Respondents that this is not a genuine one. Ext.W4 also contains working particulars which are included in Ext.W3 but with more details. This would show that WW1 was continuously working in the establishment throughout from the beginning of 1999 and was there at least till April 2002 even after the dispute was raised. As could be seen from the order of reference the dispute is raised in the year 2001. He was there even in 1993, as could be seen from Ext.W1.

10. What is to be seen from Ext.W1 to Ext.W4 is that WW1 was directly under the control and supervision of the officials of Department of Telecom and subsequently of BSNL. The case of the Respondents is that the concerned workman was working on contract basis and there was no employer-employee relationship between him and the department. However, Ext.W3 and Ext.W4 contain the signatures of the officials of the department also. There is nothing in this document to show that WW1 was working on contract basis. Though there is a case for the Respondents that the work was on contract basis, no attempt was made by the Respondents to prove this aspect. When enough documents are available on the side of the petitioner, it was for the Respondents to prove that a contract system was prevalent.

11. MW1 has given evidence based on Ext.M2 showing that there was a ban on recruitment of casual labours from the year 1985 itself. However, what is to be seen from the documents and evidence of WW1 is that in spite of the ban direct employer-employee relationship existed between the department and WW1. Even if there was any contract system as claimed by the Respondents it could only be a sham one. WW1 had been working in the establishment for a

long time. He was working throughout regularly from 1999. The contract system claimed by the Respondents having been sham and nominal he is entitled to be regularized in the establishment.

12. There is a contention for the Respondents in the Counter Statement that the Union has no capacity to represent the contract workman. MW1, the Assistant General Manager examined on behalf of the Respondents has stated during his evidence that the casual labourers could not have become members of the Union. Ext.M3 circular is produced to prove this. He has also stated that the concerned workmen who are not even casual labourers cannot become members of the Union and for this reason the Union is not competent to represent them in this dispute also. The petitioner has examined WW2, the Treasurer of the Union to meet this contention. As seen from the evidence there was earlier 6 Unions among the workmen of the Respondents. However, these Unions got merged with the Petitioner Union. In the Working Committee Meeting of the Union it was decided to espouse the case of the concerned workmen. The resolution of the Union is marked as Ext.W10. When such a resolution is taken the Petitioner Union is quite competent to raise the dispute on behalf of the concerned workmen. So the contention that the Union is not competent to espouse the cause of the workmen will not hold good.

In view of the above discussion WW1 shall be reinstated and regularized in service as Driver, within two months of publication of the Award.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri A. Thangaraj
WW2, Sri K. Srinivasan

For the 2nd Party/Respondents : MW1, Sri M. Balasubramaniam

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	-	Wage receipt
Ext.W2	20.06.2001	Letters of BSNL to the Regional Transport Officer
Ext.W3	-	Working particulars
Ext.W4Series	year 1999 year 2000 year 2001	Working particulars of A. Thangaraj Working particulars of A. Thangaraj Working particulars of A. Thangaraj
Ext.W5	-	Bye-laws of the Union
Ext.W6	30/31 Oct'2001	Resolution of the union
Ext.W7	21.03.2006	Lok Sabha Admitted Provisional Starred Question Dy. NO.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularisation of contract Workers.

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labourers
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records

Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	17.10.2005	Copy of the agreement entered into between BSNL and M/s. Kalai Industrial Security Services
Ext.M10	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group "D" employees category.

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 935.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, बीएसएनएल और अन्य, चेन्नई एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 47/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/36/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 935.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 47/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, BSNL and others, Chennai and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/36/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 22nd March, 2017

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 47/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Two Others and their workman)

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
BSNL Employees Union
No. 3/71, 4th Street, Raghava Nagar
Madipakkam
Chennai-600091

AND

1. The Chief General Manager : 2nd Party/1st Respondent
BSNL, Tamilnadu Circle, Anna Salai
Chennai-600002

2. The Chairman & Managing Director : 2nd Party/2nd Respondent
BSNL, Sanchar Bhawan
New Delhi-110001
3. The General Manager, BSNL : 2nd Party/3rd Respondent
Market Committee Building, Tollgate
Vellore

Appearance:

- For the 1st Party/Petitioner Union : M/s. K.M. Ramesh, Advocates
For the 2nd Party/Respondents : Sri P. Srinivasan, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40011/36/2002-IR (DU) dated 20.03.2003 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is :

“Whether the claim of BSNL Employees Union for absorption of the so-called contract labour continuously engaged by the management of BSNL, Vellore (as per Annexure) is legal and justified and if so to what relief the members of the Union are entitled to?”

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 47/2003 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The workman concerned in the dispute is working as Driver. The work performed by him is very essential to the establishment. He cannot be treated as contract labour, though he was engaged on cheaper wage under the nomenclature “contract labour”. The so-called contract system is only a camouflage. The alleged Contractors are regular staff of the Respondents. They directly engage the workers, supervise their work and claim and pay wages. The Respondent is an establishment coming under Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act. The concerned workman has to be made permanent on completion of 480 days in a period of 24 calendar months. There are regular sanctioned posts for regularizing the employee concerned. An Award may be passed holding that the concerned workman is entitled to absorption in the service of the Respondents from the date of his joining together with continuity of service and attendant benefits.

4. The First Respondent has filed Counter Statement on behalf of other Respondents contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of the Respondents. The claim does not relate to service conditions of employees of BSNL. As such the claim is not maintainable. The Contractors are not being impleaded as parties to the dispute. Therefore, also the petition is liable to be dismissed. The claim of the petitioner that the concerned employee is under the direct control and supervision of the Respondents, that the Contractors are mainly Officers of the Respondents, etc. are incorrect. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and WW2 and MW1 and documents marked as Ext.W1 to Ext.W6 and Ext.M1 to Ext.M12.

6. **The point for consideration is:**

Whether the concerned workman is entitled to absorption as claimed?

The Point

7. The petitioner has raised the dispute on behalf of a workman who is said to be working as Driver in the Respondent establishment. The annexure to the schedule of reference gives the details of the concerned workman. He is shown to have joined the establishment in July 1997 and was then getting wages at the rate of Ra. 80/- per day. According to the petitioner, though the concerned workman is allegedly working under the contract system, the so-called contract system is only a camouflage. It is claimed that the workman was always under the direct control and supervision of the Respondents.

8. The concerned workman has been examined as WW1. He has stated in the Proof Affidavit filed by him that initially he was driving a Matador Van. Later he was driving an Ambassador Car used by the then DGM (A). He was getting wages at the rate of Rs. 80/- per day. Later he was driving vehicles for other Officers. He is said to have been

signing the Log Book. He was turned out of work in March 2004. He has stated that he has completed 480 days of continuous service in a period of 24 calendar months.

9. The documents produced by the petitioner do not justify the case put forth. The case of WW1 is that he has been working in the Respondent establishment from the year 1997. However, documents are not available to prove this. Ext.W2 is a job card dated 14.10.1999 presumably containing the signature of WW1. There is one more job card dated 20.03.2001. Then there is Ext.W3 containing copies of Log Books from 03.10.2000 to 11.07.2001. Even these are not continuous. Another Log Book marked as Ext.W3 is of the period from 05.02.2003 to 19.02.2004. The dispute itself was raised in 2002 so Ext.W3 is a document that has come into existence after the dispute was raised and is not helpful in establishing the case of WW1. What the available documents prove is only that WW1 was in the establishment in the year 1999 and was there again from the end of 2000 to middle of 2001. There is nothing to show that he was continuously in the establishment and had completed 480 days within 24 calendar months which is the main basis of the case.

10. The admission of WW1 during his cross-examination would show that he was not working in the establishment continuously, but there was gap in between. It would also show that he was initially working on contract basis and subsequently only he started to work directly in the department. He has admitted during his cross-examination that from 1997 to 1999 he was driving private vehicle on contract basis and wages were paid by the department through Contractor. According to him, he started to drive departmental vehicle from 1999 and continued till 2001. Subsequently, he had worked from 05.02.2003 to 19.02.2004. Thus it is clear from his own evidence that before the dispute was raised he had worked directly with the Respondents only for a short period and most probably less than 480 days claimed by him.

11. Though there is a case for the petitioner that WW1 has started to work from the year 1997 no documents are available at all to show his presence in the Department prior to October 1999. There is his own admission that he was working on contract basis subsequently and wages were paid through the Contractor. So there is no justification for the case that the contract system through which he was working was sham also. Thus the available material are not sufficient to establish the case of the petitioner.

In view of my above discussion the reference is answered against the petitioner. An Award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1 st Party/Petitioner Union	:	WW1, Sri M. Deenadayalan
	:	WW2, Sri K. Srinivasan
For the 2 nd Party/Respondents	:	MW1, Sri T.S. Manoharan

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	-	Annexure to 2 (K) petition
Ext.W2	08.12.2000	Xerox copy of the job card
Ext.W3 Series	05.02.2003 To 19.02.2004	Xerox copy of the log book-Vol-I
	-	Available log book Vol-II
Ext.W4	-	Bye-laws of the Union
Ext.W5	30/31 Oct'2001	Resolution of the union
Ext.W6	21.03.2006	Lok Sabha Admitted Provisional Starred Question Dy. NO.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularization of contract Workers.

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Bigs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours.
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	19.02.2002	Copy of the agreement entered into between BSNL and M/s. M.R.S. Security and Maintenance, contractor.
Ext.M10	25.02.2003	Contract Labour (Regulation and Abolition) Act, 1970 and Central Rules, 1971- Grant of Certificate of Registration-reg
Ext.M11	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group "D" employees category.
Ext.M12	03.02.2003	Model Bill.

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 936.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, बीएसएनएल, निलगिरी एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 57/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/44/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 936.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 57/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom, BSNL, Nilgiris and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/44/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 22nd March, 2017

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 57/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and their workman)

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
 Indian Telecom Employees Line Staff & Gr. "D"
 Old No. 21, New No. 10, R.K. Srinivas Apppts.
 Bharathiyar First Street
 Pazhavanthangal
 Chennai-600114

AND

The General Manager : 2nd Party/Respondent
 Telecom, BSNL
 Nilgiris-643101

Appearance :

For the 1st Party/Petitioner Union : M/s. K.M. Ramesh, Advocates
 For the 2nd Party/Respondent : Sri D. Simon, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40011/44/2002-IR (DU) dated 22.04.2003 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is :

"Whether the demand of the Union for absorption of the 126 workers (list attached) engaged through various Contractors for various work by BSNL is justified? If not, to what relief they are entitled?"

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 57/2003 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The Petitioner is a registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The employees concerned in the dispute are doing Housekeeping, Line Work, Security, etc. under the Respondents. The employees are working through the alleged Contractor. Even though the Contractors change often these employees continue to work for the Respondents. The nature of duties performed by the employees are the same as carried out by the permanent employees of the Telecom Department. The work done by them is perennial in nature. The alleged contractors in most of the cases are one of the employees of the Respondents. The concerned employees cannot be treated as contract labourer. The so-called contract system is a sham one. The overall control of the employees was with the Telecom Department. The so-called contract labour system is only camouflage. There are sanctioned posts for regularizing the employees concerned in the case. The Respondent establishment is one that comes under Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act. All the employees have completed 480 days of service in a period of 24 calendar months. They are entitled to be made permanent. An Award may be passed holding that the workmen are entitled to absorption in the service of the Respondents from the date of their joining service together with continuity of service and attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

The petitioner has no *locus-standi* to raise the dispute on behalf of the concerned workmen. The BSNL prohibits Unions from taking up the cause of contract labourers. The Respondents have not engaged any workmen directly. Work is given on contract and has been extracted through Contractors. There is no employer-employee relationship between the workmen engaged by the Contractors and the Respondents. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder denying the contentions raised in the Counter Statement and also reiterating the case in the Claim Statement

6. The evidence in the case consists of oral evidence of WWs 1 & 2 and MW1 and documents marked as Ext.W1 to Ext.W10 and Ext.M1 to Ext.M12.

7. **The point for consideration is:**

Whether the concerned workmen are entitled to absorption as claimed?

The Point

8. The Petitioner Union has raised the dispute on behalf of 126 workmen whose names and other details are given in the annexure to the schedule of reference. The case of the petitioner is that the workmen named in the annexure have been working for the Respondents for a long period, some of them starting even from 1993. It is stated that they have been doing work which is perennial in nature. The contract system through which they are working is said to be a sham one. It is also stated that the alleged Contractors are regular staff of the Respondents and they were directly engaging the workers and supervising the work. The petitioner has claimed permanency for the workers under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act also on the basis that they have completed 480 days of work within a period of 24 calendar months. The Respondent has contended that the Petitioner Union has no *locus-standi* to raise the dispute at all as the concerned workmen are contract workmen and the Union having no authority to raise dispute on behalf of workmen who are not its members.

9. One of the concerned workman, Antony Amalraj has given evidence as WW1. He has stated in the Affidavit in lieu of Chief Examination filed by him that he has started to work as Helper to Cable Jointer and he was attending the work of cable jointing and cable fault. Some workmen concerned in the dispute were working in house-keeping also. They were sweeping the premises, washing the floor, fetching water, etc. They are said to have been paid directly by the Respondent. WW1 has further stated that all the workmen have completed 480 days of continuous work in a period of 24 calendar months and they are entitled to be conferred permanent status in the establishment. It is also stated that the contract system put forth by the Respondent is a sham one. He has stated during his cross-examination that he used to be paid directly from the Office of the Respondent.

10. WW2 is an employee of the Respondent. He is the Circle Treasurer of the Petitioner Union. His evidence is intended to meet the contention of the Respondent that the petitioner has no *locus-standi* to raise the dispute.

11. Though dispute is raised on behalf of 126 workmen, documents pertaining to a very few number of workmen are produced by the petitioner. Ext.W2 is described as the Work Register which contains the name of some workmen alongwith the signature and also the signature of the Mazdooring Officers. Page-2 of the document is in respect of one Ramesh Kumar who is also named in the annexure to the schedule of reference alongwith another who had worked as Guard. The page contains signature of Ramesh Kumar as well as the signature of the Sub-Divisional Officer. This would show that he had been working as Guard in 1996. However, there are no other documents to show that he had continued to work in the Respondent establishment subsequently also. Ext.W5 contains a series of certificates in the name of different persons. Page-35 contains a certificate issued to Ramesh Kumar which states that he had worked as contract labour from 05.05.1994 to 05.03.1995. Thus the available documents would only show that he had been working for some time prior to 1996. Whether he has continued in the establishment could not be deciphered from the documents produced. The concerned workman has not come forward to give evidence also. There is of course the vague evidence given by WW1 that himself and all the other workmen have been continuing in the establishment. But there is no documentary evidence in respect of this. So in spite of some evidence in respect of Ramesh Kumar there is nothing to show that he had been continuously working in the establishment. So the claim in respect of even this workman has to be rejected.

12. So far as the other workmen named in the annexure to the schedule of reference other than WW1 are concerned material is totally lacking to consider the case. Page-1 of Ext.W2 only shows that some of the workmen had been engaged as Mazdoors in May 1986. Page-9 onwards contain some dates, numbers, etc. But nothing could be deciphered out of this. Page-16 and 19 coming under Ex.W3 are receipts in the name of one Samuel during 1992. But there is nothing to show that he continued in the establishment. Page-20 to 22 contains ACG-17 receipts in the name of Muralidharan who is described as Casual Driver. These are of 1997. Except these receipts no other documents are available in respect of this workman. Pages 23 to 25 are in respect of one D'Souza. The period shown is 1997 and 1998. There is no evidence to show when he joined the establishment either as a casual labourer or as a contract labour. There is no evidence regarding his continuing in the establishment also. Pages-27 to 30 are in respect of one Jhansi. These are of the year 2003, apparently after the dispute was raised. The other certificates available in Ext.W5 are in respect of different workmen and would not be of use in establishing the case of individuals concerned for the reason that except those certificates no other documents are available to show that they had been working in the establishment. The period of work, whether they are continuing in the establishment, etc. are not at all established.

13. WW1 has stated in his affidavit as well as in cross-examination that he is still working with BSNL as Cable Jointer. This case that he is still continuing in the establishment is not disputed by the Respondents. A perusal of the documents produced in respect of WW1 would show that he was in the establishment for a long time. Ext.W7 contains different payment receipts in respect of WW1. Payments are seen made in November 1992, December 1992, January 1993, etc. Page-14 reveals payment for different months in the year 1994. Apart from these are the certificates contained in Ext.W5. There are certificates issued for the period in 1993, 1994, 1995, 1996 to 1998, etc. These documents would show that he was continuing in the establishment and was there even at the time when the dispute

was raised. Payments are seen made to WW1 directly by the officials of the Respondents though he is at times described as a contract labourer.

14. The petitioner has got a case that the concerned workmen are actually under the direct control and supervision of the officials of the Respondent establishment though they were put under a camouflage of a contract system. This seems to be correct when the documents produced are taken into account. Apart from the evidence given by MW1, there is no other evidence to show that they were working as contract workmen. When the petitioner has put forth sufficient evidence to justify the case that the contract system, if any, was a sham and nominal one, the burden shifts on the other side to establish that it is not so. Of course, MW1 has stated during his examination that there was ban on engaging casual workers directly after March 1985 as revealed by Ext.M2 order issued by the Government. However, the evidence reveals that even after 1985 persons were being engaged and paid directly by the Department.

15. The counsel for the petitioner has referred to the decision of the Apex Court in **WORKMEN OF FOOD CORPORATION OF INDIA VS. FOOD CORPORATION OF INDIA** reported in AIR 1985 SC 670 where it was held that a person who is under direct employment cannot be converted to a contract employee. It was a case where the Food Corporation had engaged several workmen directly but subsequently a Contractor was inducted and the workmen were brought under him. The dictum was laid down in this context. The petitioner had raised the dispute not long after the so-called contractual system was brought into effect. Apparently, the Respondents without notice to the concerned workmen had brought in a contract system. But they have not proved it properly. The Apex Court has stated in **HUSSAINBHAI VS. ALATH FACTORY THOZHILALI UNION** reported in AIR 1978 SC 1410 that the presence of intermediate Contractors with whom the workers have immediate or direct relationship *ex contractu* is of no consequence when on lifting the veil or looking at the conspectus of factors governing employment will discern the naked truth, though draped in different perfect arrangement, that the real employer is the Management and not the immediate Contractor. In the present case, on removal of the veil it is very much clear that the contract system if any under which the concerned workers were working was only sham and nominal and they were really working under the Respondents itself.

16. There is a contention for the Respondents in the Counter Statement that the Union has no authority to represent the workmen. MW1, the Divisional Engineer examined on behalf of the Respondents has stated during his evidence that the casual labourers could not have become members of the Union. Ext.M3 circular is produced to prove this. He has also stated that the concerned workmen who are not even casual labourers cannot become members of the Union and for this reason the Union is not competent to represent them in this dispute also. The petitioner has examined WW2, the Treasurer of the Union to meet this contention. As seen from his evidence there were earlier 6 Unions among the workmen of the Respondents. However, these Unions got merged with the Petitioner Union. In the Working Committee Meeting of the Union it was decided to espouse the cause of the concerned workmen. The resolution of the Union is marked as Ext.W10. When such a resolution is there the Petitioner Union is quite competent to raise the dispute on behalf of the concerned workmen. So the contention that the Union is not competent to espouse the cause of the workmen will not hold good. Those workmen who have proved their eligibility by establishing that they were working with the Respondent for a long time are entitled to relief.

17. It is clear from the evidence of WW1 and the documents available on his behalf that he was working in the establishment at least from 1992. The contract system, if any, through which he was engaged is only a sham one. He is to be treated as an employee of the establishment itself. So he is entitled to the relief claimed. Accordingly an Award is passed as below:

WW1, Antony Amalraj shall be deemed to have been absorbed and regularized in the service of BSNL in his then position with effect from the date on which the dispute was raised. He shall be entitled to regular scale from this date. The difference in the salary payable to him on account of the absorption shall be paid within two months of the publication of the Award. In case of default interest at the rate of 6% is payable on the amount, from the date of the Award.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1 st Party/Petitioner Union	:	WW1, Sri Antony Amalraj WW2, Sri K. Srinivasan
For the 2 nd Party/Respondents	:	MW1, Sri V. Sreedharan

Documents Marked:**On the petitioner's side**

Ex.No.	Date	Description
Ext.W1	-	Annexure to 2(K) petition
Ext.W2	-	Work Register
Ext.W3	-	Wage Slip
Ext.W4	-	Messenger Deliver Slip
Ext.W5	-	Conduct Certificate
Ext.W6	12.04.1994	Certificate
Ext.W7	-	Payment receipt
Ext.W8	-	Bye-laws of the Union
Ext.W9	30/31 Oct'2001	Resolution of the union
Ext.W10	21.03.2006	Lok Sabha Admitted Provisional Starred Question Dy. NO.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularisation of contract Workers.

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours.
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	31.05.2006	Copy of the agreement entered into between BSNL and M/s. Alert Security Services, contractor.
Ext.M10	18.07.2005	Contract Labour (Regulation and Abolition) Act, 1970 and Central Rules, 1971-Grant of Certificate of Registration-reg
Ext.M11	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group "D" employees category.
Ext.M12	02.08.2000	Award of Tender.

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 937.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रिंसिपल, आरसीजी-सीटीटीसी, बीएसएनएल, चेन्नई व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 26/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 का प्राप्त हुआ था।

[सं. एल-40011/24/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 937.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 26/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to The Principal, RCG-CTTC, BSNL, Chennai and others, and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/24/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 22nd March, 2017

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 26/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Two Others and their workman)

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
BSNL Employees Union
No. 3/71, 4th Street, Raghava Nagar, Madipakkam
Chennai-600091

AND

1. The Principal : 2nd Party/1st Respondent
RCG-CTTC, BSNL
Meenambakkam
Chennai-600027
2. The Chairman & Managing Director : 2nd Party/2nd Respondent
BSNL, Sanchar Bhawan
New Delhi-110001
3. The Chief General Manager, Telecom : 2nd Party/3rd Respondent
BSNL, Tamil Nadu Circle
Anna Salai
Chennai-600002

Appearance:

For the 1st Party/Petitioner Union : M/s K.M. Ramesh, Advocates
For the 2nd Party/Respondents : Sri D. Simon, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40011/24/2002-IR (DU) dated 07.01.2003 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the non-absorption of the casual employees as per Annexure as claimed by the BSNL Employees Union is legal and justified? If not, to what relief the workmen are entitled to?”

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 26/2003 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a registered trade union having substantial number of permanent workmen working in BSNL as its members. The workmen concerned in the dispute are doing the work of house-keeping, cable joining and line work, operation and maintenance of electro-mechanical services, etc. They are working directly under the control and supervision of BSNL. They are doing the very same work carried out by the permanent employees of the Telecom Department. The work done by them is perennial in nature. The workmen employed to do the aforesaid functions cannot be treated as contract labour. The so-called contract system is sham. The administrative control of the workmen remains with the telecom department. The alleged contractors are regular staff of the Respondents. There are regular sanctioned posts for regularizing the workmen concerned in the case. The BSNL is an establishment as per the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned workmen have to be made permanent on completion of 480 days in a period of 24 calendar months. An order may be passed directing to regularize and absorb the concerned workmen in the service of the Respondents from the date of their joining in service, together with continuity of service and other attendant benefits.

4. The Respondents have filed Counter Statement contending as below:

The petitioner has no *locus-standi* to espouse the cause of persons who are not employees of the Respondents. The Contractors have not been impleaded as parties. The dispute is liable to be dismissed for non-joinder of necessary parties. The claim of the petitioner that the employees are doing same work as that of the regular employees, that the work done by them is perennial in nature, that there is direct control and supervision of the workmen by the Respondents, that the Contractors are mainly Officers of the Respondents, etc. are incorrect. It is admitted by the petitioner that the concerned workmen are contract labourers. So there is no question of absorption or regularization. The case of the petitioner that the contract is sham is not correct. There is no camouflage as alleged. The Respondents never exercised control or supervision over the concerned workmen. The Respondents are not organizing the work of contract labour. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and documents marked as Ext.W1 to Ext.W8. No evidence either oral or documentary was adduced on the side of the Respondents.

6. **The point for consideration is:**

“Whether the concerned workmen are entitled to absorption as claimed?”

The Point

7. The Petitioner Union has raised the dispute on behalf of 6 workmen whose names and other details are given in the annexure to the schedule of reference. According to the petitioner these workmen were doing works like house-keeping, cable joining, operation and maintenance of electro-mechanical services, etc. As revealed from the annexure to the schedule of reference, the workmen had started to work for the Respondents in the year 1991, 1992, 1998, 1999, etc. It is claimed by the petitioner that these workmen are entitled to the benefit of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act as they have already worked for more than 480 days in 24 calendar months and also because they were working for a long time for the Respondents doing perennial nature of work and the contract system through which they are said to be working being sham.

8. One of the workmen has been examined as WW1. Though the names of 7 workmen are given in the annexure to the schedule of reference, WW1 has given evidence for himself and three others by name Apoorvam, Devanayaki and Unnamallai. He has stated in the Proof Affidavit filed by him that all of them were employed ever since 1999 and were working continuously without any break. Now all of them are working for 8 hours a day. Earlier they used to work for more than 12 hours. He has stated that all of them are working under the control and supervision of the Officers of BSNL. He has further stated that they have completed 480 days of continuous service in a period of 24 calendar months and are entitled to be conferred with permanent status. The work done by them is said to be perennial in nature. WW1 has claimed regularization of all of them in the establishment.

9. Ext.W1 and Ext.W2 are documents pertaining to a workman who is no more and are not relevant for the case. Ext.W3 is Attendance Register containing the name of WW1 as well. However, it could not be deciphered from this in

respect of which establishment it is. Most of the sheets of the document are without year also. Ext.W4 is a certificate issued by a Divisional Engineer, Telecom who happened to stay in the Inspector Quarters at Meenambakkam. The certificate states that WW1 was there in the Inspection Quarters attending the rooms on 07.02.2002 and 10.03.2002. Ext.W5 is an Entry Pass in the name of WW1, valid upto 31.03.2002. But this does not show the date of issue. Ext.W6 is an Entry Pass permitting WW1 to enter RGM from 12.01.2000 to 30.01.2000. Ext.W7 is the copy of a letter written by the Deputy Director of Vocational Rehabilitation Centre for Handicapped to the Chief General Manager of BSNL forwarding an application from WW1 requesting for regularization of his employment. The letter states that WW1 has been working in the establishment as Group "D" since 1999 on casual basis. It also states that WW1 is a visually handicapped person.

10. The documents referred to above would show that WW1 was working for the establishment at least from 1999. He seems to have been continuously in the establishment. It is apparent from his oral evidence that he is even now working for the Respondents. He has described himself as doing the work of house-keeping. It is not disputed by the Respondents also that he is still doing house-keeping for the Respondents. It is certainly a job which is perennial in nature. The claim of the Respondents is that the workmen were working under a Contractor. However, the very letter marked as Ext.W7 would show that WW1 was directly under the control of the Respondents and that is why letter recommending regularization was written. The so-called contract system must be a sham one. The Respondents themselves have not adduced any oral evidence or produced any documents to prove that the case put forth by WW1 is not true.

11. Apart from the above is the fact that WW1 is a Visually Handicapped person. For this reason he deserves special consideration. So WW1 is entitled to the regularization claimed.

12. So far as the other workmen are concerned, evidence is not available to prove their case. They have not come forward to prove their case. No documents are available in respect of these workmen also. So they are not entitled to any relief.

13. The counsel for the Respondents have referred to the decision of the Apex Court in Uma Devi's case reported in 2006 4 SCC 1 where it was held that there cannot be regularization of the workmen as they were engaged without following due process of selection as envisaged in constitutional scheme. However, the dictum laid down in the Uma Devi's Case has been subsequently explained in the case MAHARASHTRA STATE ROAD TRANSPORT CORPORATION VS. CASTERIBE RAJYA PARIVAHAN KARMACHARI SANGHATANA reported in 2009 2 SCC (L&S) 513. It has been held in the above decision that the powers of the Industrial and Labour Courts were not under consideration in Uma Devi case and issues like one pertaining to unfair labour case was not at all referred to, considered or decided in Uma Devi case. Unfair labour practice on the part of the employer in engaging them as Badlis, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent employees as provided in Item-6 of Schedule IV and the power of Industrial and Labour Courts under Section-30 of the Act did not fall for adjudication or consideration before the Constitution Bench in Uma Devi's case, it was held. It was also held that Uma Devi does not denude the Industrial and Labour Courts of the statutory power to order permanency of the workers who have been victims of unfair labour practice on the part of the employer.

14. When considered in the light of the above dictum it is very much clear WW1 has been made to work under the guise of a contract system for low wages depriving him of the status and privilege of permanent employee. It is certainly unfair labour practice on the part of the employer. The contract if any under which WW1 worked has to be treated as sham and nominal.

In view of the discussion above, the reference is partly answered in favour of the petitioner.

WW1 shall be regularized in BSNL in his present position within two months from the date of publication of the Award.

Award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri M. Ganesan

For the 2nd Party/Respondents : Nil

Documents Marked:**On the petitioner's side**

Ex.No.	Date	Description
Ext.W1	16.12.1992	Copy of Contract letter from circle Telephone Training Centre
Ext.W2	23.04.1996	Copy of Contract letter from circle Telephone Training Centre
Ext.W3	-	Copies of Available Attendance Registers
Ext.W4	26.04.2002	Copy of Certificate issued to M. Ganesan
Ext.W5	-	Copy of ID Card issued to M. Ganesan
Ext.W6	-	Copy of Entry pass issued to M. Ganesan
Ext.W7	03.07.2007	Copy of letter from Vocational Rehabilitation Centre for Handicapped to the Chief General Manager, BSNL, Circle Office, Chennai-2
Ext.W8	-	Copy of ID Card issued to Smt. Deivanayaki

On the Management's side

Ext.No.	Date	Description
	Nil	

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 938.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार, बीएसएनएल, चेन्नई व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 55/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/53/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 938.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 55/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, BSNL, Chennai and others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/53/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 22nd March, 2017

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 55/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and 3 Others and their workman)

BETWEEN :

The Circle Secretary
BSNL Employees Union
No. 3/71, 4th Street, Raghava Nagar

:

1st Party/Petitioner Union

Madipakkam
Chennai-600091

AND

1. The Chief General Manager : 2nd Party/1st Respondent
BSNL, Tamilnadu Circle
Anna Salai
Chennai-600002
2. The Chairman & Managing Director : 2nd Party/2nd Respondent
BSNL
Sanchar Bhawan
New Delhi-110001
3. The General Manager, Telecom : 2nd Party/3rd Respondent
BSNL
K.K. District
Nagercoil

Appearance:

- For the 1st Party/Petitioner Union : M/s K.M. Ramesh, Advocates
For the 2nd Party/Respondents : Sri P. Srinivasan, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40011/53/2002-IR (DU) dated 17.04.2003 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the demand for regularization of the services of Sri A. Anil Kumar and 23 Others (list enclosed) is justified? If so, to what relief they are entitled to?”

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 55/2003 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.
3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a Registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The dispute is raised on behalf of workmen working in the Office of BSNL, Nagercoil. These workmen are doing the work of housekeeping, sweeping, etc. These workmen are working directly under the control and supervision of BSNL. They are doing the very same work carried out by the permanent employees of the Department. The work done by them is perennial in nature. The workmen cannot be treated as contract labour but have to be treated as part and parcel of the regular service of the Department. All the workmen concerned in the dispute are Class-IV employees for which sponsorship from Employment Exchange is not required. The work performed by them is essential. The so-called contract system is a sham one. The overall control of the workmen including administrative control remained with the Department. The alleged Contractors are regular staff of the Department. They engage the workers, supervise the work, take their attendance and claim and pay their wages. There are regular sanctioned posts for regularizing the workmen concerned in the case. The BSNL is an establishment as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned workmen having completed 480 days of work in a period of 24 calendar months should be made permanent. An Award may be passed holding that the workmen are entitled to regular absorption in the service of the establishment from the date of their joining together with continuity of service and attendant benefits.

4. The Respondents have filed Counter Statement contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of BSNL. The petitioner is not a recognized union. The subject matter of the claim does not relate to the service conditions of any of the employees of BSNL. As such the claim is not maintainable. The Contractors have not been impleaded as parties. So the dispute is bad for non-joinder of necessary parties. It is not correct to state that the concerned workmen are doing work of the same nature as done by regular employees, that the work is perennial in nature, that there is direct control and supervision by the Respondents, that the Contractors are the Officers of BSNL, etc. Though the petitioner has admitted that the workmen are contract labourers they are described as casual labourers doing the work of Class-IV employees. These are mutually inconsistent pleas. In the case of contract labourers there is no supervision or control by the principal employers. The petitioner having admitted that the concerned workmen are contract labourers, the

question of their absorption or regularization do not arise. The Respondents have not been prevented from engaging contract labour. The Respondents do not know about the details of the concerned workmen. It is the Contractors who do the work and they only know about the details of their workmen. If the workmen have worked for more than 480 days they are to claim permanency with the Contractors and not with the Respondents. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and WW2 and MW1 and documents marked as Ext.W1 to Ext.W14 and Ext.M1 to Ext.M12.

6. **The point for consideration is:**

Whether the concerned workmen are entitled to absorption as claimed?

The Point

7. The Petitioner Union has raised the dispute on behalf of 24 workmen whose names and other details are given in the annexure to the schedule of reference. The annexure states that the concerned workmen were working in the office. The dates on which they are said to have started to work also are given in the annexure alongwith the place of work. According to the petitioner, the contract system under which the concerned workmen are made to work is a sham one. They are said to be under the direct control and supervision of the officials of BSNL. The petitioner has claimed absorption of the workmen in BSNL on this basis and also on the basis that they have worked for more than 480 days within a period of 24 calendar months and are entitled to be conferred with permanent status as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act.

8. One of the workman named in the annexure to the schedule of reference has given evidence as WW1. He has reiterated the case in the Claim Statement, in the Proof Affidavit filed by him. He had asserted that the so-called contract system is a sham one and all of them were under the control and supervision of the officials of the Respondents. WW1 has also given the names of the officials who are said to have extracted work from the concerned workmen. He has further stated that the so-called Contractors were always the employees of BSNL themselves.

9. Though evidence given by WW1 is on behalf of 23 other workmen whose names are given in the annexure to the schedule of reference also, sufficient materials are not available in respect of any of these other workmen. Ext.WW1 is the Duty Chart showing the names of different workmen. This would only show that some of the workmen had been working during different periods. This would not show that they were continuously working. Ext.W2 contains documents described as bill in respect of some workmen. These are also not continuous and not sufficient to make out that the workmen named have been working continuously for the establishment. Ext.W3 also gives the name of a few workmen. But the purpose of these documents are not described and nothing could be made out of this. Ext.W9 is the Duty Chart in respect of one Rajnikant. This document gives some dates on which the said workman had worked. However, this is not a continuous one and is not sufficient to show that he had been working continuously in the establishment. The concerned workman had not come forward to give evidence also. On the basis of the above documents a relief cannot be granted. There is nothing to establish the case that the workmen had been working for BSNL for a long time or that they have completed 480 days of continuous service within a period of 24 calendar months.

10. Some documents in respect of WW1 are available. It is to be seen if these are sufficient to establish his case. Ext.W4 contains two identity slips, one dated 18.01.1995 and another dated 05.09.2000. WW1 has stated during his examination that he has started to work for the Respondents during June 1993. It is clear from the identity slip that he had started to work for the Respondents at least in 1995. The identity slips contain the signature of Sub-Divisional Engineer, Nagercoil. There was no suggestion during cross-examination that these documents are not genuine. Ext.W5 contains a temporary pass issued to WW1 on 12.08.1996. He is described as a Mazdoor in the Department of Telecommunication. This document also contains the seal and signature of the Department. The same document contains another temporary pass issued on 05.09.1997 also. Ext.W6 is a letter by the Divisional Engineer of Nagercoil regarding non-payment of wages to WW1. This states that he was not paid wages for the period from 5th June to 20th July, 1999. The letter recommends payment of the amount at the earliest. Ext.W7 is a letter by a Junior Telecom Officer in January 1995 asking to handover the TTC Card to WW1. Ext.W8 contains identity slips issued by the Tamil Nadu Transport Corporation to WW1 on the basis that he is working for the BSNL. Ext.W10 contains several payment vouchers indicating that WW1 was all along working for the establishment during 1997, 2000, 2001, 2002 and 2003. There could not be any doubt about the genuineness of these documents as all these contain the seal of the establishment and signature of one or other Officer of the establishment. It is clear from these documents that WW1 had been working for the Respondents at least from the year 1995 and had continued to work so even during 2003 after the dispute was raised. Even though the documents are not continuous, there are documents sufficient enough to come to a conclusion that he was continuously working for the establishment.

11. The case of the petitioner is that the workmen are made to work under a Contractor but the contract system is a sham one. MW1 has been examined on behalf of the Respondents to prove that there was a ban in engaging workmen on casual basis and that the engagement was only on contract basis. However, as could be seen from the evidence of MW1, in spite of the ban workmen were directly. The documents produced on behalf of WW1 would show that he was working directly for the establishment at the time. The case of the Respondents is that after the ban contract system was brought in and the workmen were working on contract basis only. The initial documents do not support such a case. Though, subsequent receipts refer to him as on contract, payment is seen made by the department directly. In any case change from direct employment to contract employment has been deprecated by the Apex Court. The counsel for the petitioner has referred to the decision of the Apex Court in WORKMEN OF FOOD CORPORATION OF INDIA VS. FOOD CORPORATION OF INDIA reported in AIR 1985 SC 670 where it was held that a person who is under direct employment cannot be converted to a contract employee. It was a case where the Food Corporation had engaged several workmen directly but subsequently a Contractor was inducted and these workmen were brought under him. The dictum was laid down in this context. The Apex Court has stated in HUSSAINBHAI VS. ALATH FACTORY THOZHILALI UNION reported in AIR 1978 SC 1410 that the presence of intermediate Contractors with whom the workers have immediate or direct relationship excontractu is of no consequence when on lifting the veil or looking at the conspectus of factors governing employment will discern the naked truth, though draped in different perfect arrangement, that the real employer is the Management and not the immediate Contractor. In the present case, it is very much clear that the contract system if any under which WW1 was working was only a sham and nominal one and he was under the Respondents itself.

12. MW1, the Assistant General Manager of Nagercoil has been examined on behalf of the Respondent. He has stated that Ext.M1 is the notification which would show that BSNL Employees Union is given recognition only to represent the matters of its own members. Thus according to the Respondent the Petitioner Union has no locus-standi to raise the dispute. WW2, an official of the Union has been examined to meet this case. Ext.W20 the bye-laws of the Union and Ext.W21 the resolution passed by the Union on 30th and 31st October, 2001 are marked through this witness. WW2 has stated that as per the bye-laws of the Union it is entitled to espouse the cause of BSNL employees in general. Apart from that it has decided to espouse the cause of all workmen who had not been regularized, by Ext.W21 resolution. So the contention that the Union is not competent to espouse the cause of the workmen will not hold good. The concerned workman had been working for the Respondent for several years. So he is entitled to be regularized in service as claimed by him. Accordingly an Award is passed as below:

WW1 shall be deemed to have been absorbed in the service of the Respondents in his then position from the date on which the dispute was raised. He will be entitled to the arrears of pay due to him consequent to such absorption. If the amount is not paid within two months of publication of the Award, it will carry interest at the rate of 6% per annum from the date of the Award.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri P. Kannan
WW2, Sri K. Srinivasan

For the 2nd Party/Respondents : MW1, Sri L. George

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	-	Duty Chart
Ext.W2	-	ACE-2
Ext.W3	-	Wage Receipt
Ext.W4	-	Identity Slip
Ext.W5	-	Identity Slip
Ext.W6	02.12.1999	Letter of the respondent

Ext.W7	24.01.1995	Letter of the respondent to Tamil Nadu Transport Corporation
Ext.W8	-	Identity slip issued by Tamil Nadu Transport Corporation
Ext.W9	-	Duty Chart
Ext.W10	-	Payment Voucher
Ext.W11	-	Annexure in the 2(K) petition
Ext.W12	-	Bye-laws of the Union
Ext.W13	30/31 Oct'2001	Resolution of the union
Ext.W14	21.03.2006	Lok Sabha Admitted Provisional Starred Question Dy. NO.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularisation of contract Workers.

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours.
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	13.10.2005	Tender for HK & GS for NGC SDCA-Zone Awarding of Tender-reg
Ext.M10	30.12.2002	of Certificate of Registration Contract Labour (Regulation and Abolition) Act,1970 and Central Rules,1971-Grant-reg
Ext.M11	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group “D” employees category.
Ext.M12	19.11.2005	Award of Tender.

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 939.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 क अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, बीएसएनएल विरुद्धनगर व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 42/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/40/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 939.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 42/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the

General Manager, Telecom, BSNL, Virudhunagar and others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/40/2002-IR (DU)]
RAJENDRA JOSHI, Dy. Director

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI

Wednesday, the 22nd March, 2017

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 42/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Two Others and their workman)

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
BSNL Employees Union
No. 408, 4th Street, Raghava Nagar
Madipakkam
Chennai-600091

AND

1. The General Manager, Telecom : 2nd Party/1st Respondent
BSNL
Virudhunagar - 626001
2. The Chief General Manager : 2nd Party/2nd Respondent
BSNL Tamilnadu Circle
Anna Salai
Chennai-600002
3. The Chairman-cum-Managing Director : 2nd Party/3rd Respondent
BSNL, Sanchar Bhawan
New Delhi-110001

Appearance:

For the 1st Party/Petitioner Union : M/s K.M. Ramesh, Advocates
For the 2nd Party/Respondents : Sri P. Srinivasan, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40011/40/2002-IR (DU) dated 26.02.2003 / 05.03.2003 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the employment of Sri T. Mariappan, P. Pandiarajan, P. Vanamurthilingam and Smt. P. Mallika engaged for cleaning work by Telecommunication Department, have to be regularized? If so, what relief they are entitled to?”

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 42/2003 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.
3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a Registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The dispute is raised on behalf of workmen working in the Office of BSNL, Virudhunagar. They are doing Cleaning Work. These workmen are working directly under the control and supervision of BSNL. They are doing the very same work carried out by the permanent employees of the Department. The work done by them is perennial in nature. The workmen cannot be treated as contract labour but have to be treated as part and parcel of the regular service of the Department. All the workmen concerned in the dispute are Class-IV employees for which

sponsorship from Employment Exchange is not required. The work performed by them are essential. The so-called contract system is a sham one. The overall control of the workmen including administrative control remained with the Department. The alleged Contractors are regular staff of the Department. They engage the workers, supervise the work, take their attendance and claim and pay their wages. There are regular sanctioned posts for regularizing the workmen concerned in the case. The BSNL is an establishment as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned workmen having completed 480 days of work in a period of 24 calendar months should be made permanent. An Award may be passed holding that the workmen are entitled to regular absorption in the service of the establishment from the date of their joining together with continuity of service and attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of BSNL. The petitioner is not a recognized union. The subject matter of the claim does not relate to the service conditions of any of the employees of BSNL. As such the claim is not maintainable. The Contractors have not been impleaded as parties. So the dispute is bad for non-joinder of necessary parties. It is not correct to state that the concerned workmen are doing work of the same nature as done by regular employees, that the work is perennial in nature, that there is direct control and supervision by the Respondents, that the Contractors are the Officers of BSNL, etc. Though the petitioner has admitted that the workmen are contract labourers they are described as casual labourers doing the work of Class-IV employees. These are mutually inconsistent pleas. In the case of contract labourers there is no supervision or control by the principal employers. The petitioner having admitted that the concerned workmen are contract labourers, the question of their absorption or regularization do not arise. The Respondents have not been prevented from engaging contract labour. The Respondents do not know about the details of the concerned workmen. It is the Contractors who do the work and they only know about the details of their workmen. If the workmen have worked for more than 480 days they are to claim permanency with the Contractors and not with the Respondents. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1, WW2 and WW3 and MW1 and documents marked as Ext.W1 to Ext.W9 and Ext.M1 to Ext.M10.

6. **The point for consideration is:**

Whether the concerned workmen are entitled to regularization as claimed?

The Point

7. The petitioner union has raised the dispute on behalf of four workmen who are said to be doing cleaning work in the Office of BSNL at Virudhunagar. The case of the petitioner is that all these workmen are working directly under the control and supervision of BSNL. According to the petitioner the case of employment through contract put forth by the Respondents is false. The contract system if any is said to be a camouflage. The Contractors are said to be regular employees of the Respondents. The petitioner has claimed regularization of the concerned workmen on the ground that the contract under which they are said to be working is a sham one and also on the ground that all the workmen have completed more than 480 work days within a period of 24 calendar months and are entitled to be made permanent under Tamil Nadu Industrial Establishment (Conferment of Permanent Status of Workmen) Act.

8. The petitioner has examined two of the workmen concerned in the case to establish the case. The Circle Treasurer of the Petitioner Union is also examined on behalf of the petitioner. His evidence is intended to meet the case that the Union has no locus-standi to espouse the cause of the concerned workmen.

9. WW1, Vanamurthilingam has stated in his affidavit that his evidence is on behalf of himself and also Mariappan and Pandiarajan, the other two workmen. He has stated in the affidavit that Mallika, one of the concerned workman is not interested in pursuing the dispute and he is not seeking any relief on her behalf. This witness has reiterated the case in the Claim statement. He has stated in the affidavit that they were employed by the Virudhunagar Telecom SSA and were working in Mamsabura. All of them were doing the work of housekeeping prior to the formation of BSNL. The Department of Telecom was then maintaining register and paying wages by obtaining signatures in ACG-17 receipts. They were paid wages by the Junior Telecom Officer (JTO) monthly. Apart from doing cleaning work WW1 is said to be have done also the work of erecting post, construction of OFC Stores, etc. He has also stated that for the purpose of cleaning, disinfectant, broomstick and other materials were supplied by the department itself.

10. WW2, Pandiarajan also has given evidence in tune with the evidence of WW1. He has stated that he has joined the department in the year 1990. He was given cleaning work for two days in a week for six hours a day. From 1992 to 1994 he was working six hours a day for six days in a week. When the regular employee was promoted he was asked to discharge his work from 1994 and he was working for 8 hours a day. In addition to cleaning work he was working as Delivery Messenger also. He has stated that from 1994 till the date of his filing the affidavit he was working as Special

Messenger and also doing cleaning work. According to him only in 2003 cleaning work had been entrusted to an outsider but without his knowledge. In spite of that his salary was being paid by the JTO directly, he has stated.

11. What are the documents produced on behalf of the petitioner to substantiate the case? Ext.W1 is an identity slip issued to WW2 by the JTO of Virudhunagar in 1998. Ext.W4 is described as working particulars of WW2 for the years 2004 and 2005. The first page of this describe the document as Log Book for Pandiarajan for the period from 12.01.2004. It contains the seal of the JTO at Virudhunagar. The subsequent pages of the document are the details of the duty of Pandiarajan as Special Messenger on several dates for 2004 and 2005. However, none of these pages contain the seal or signature of any of the officials of the department. But it could be seen from the cross-examination of WW2 that the fact that he has been working for BSNL has not been challenged by the Respondents during cross-examination. Ext.W5 contains payment receipts in respect of Pandiarajan. It could be seen from these ACG-17 receipts that Pandiarajan was getting paid directly by the Telecom Department in the year 1995. There are several receipts starting from those of January 1995 and reaching upto December 1996. It could be seen from these that Pandiarajan was working regularly for the Respondents during this period and he was paid by the Respondents directly also. Ext.W1 the Identity Card issued to Pandiarajan would show that he was continuing as a workman even during 1998. Of course, no documents pertaining to the period from 1998 to 2001 in which year the dispute was raised are not seen produced. However, when the fact that he continued in the establishment even in 2004 and 2005 and was working in the establishment even at the time when he gave evidence are taken into account it is only a matter of assumption that this workman had been working in the establishment regularly.

12. Ext.W3 contains working particulars said to be in respect of WW1, Vanamurthilingam. The particulars given are of cleaning the premises, bringing water, etc. the name of the supervisor, controlling officer, etc. are also given. However, these documents do not contain the seal of the establishment or even the signature of any of the Officers. In any case these particulars are of the period starting from May 2000 only. The dispute itself was raised in 2001. There is nothing to show at which time WW1 had started to work in the establishment. In the affidavit filed by him he has not stated at which time he started to work. What is revealed from Ext.W3, even if it is genuine, is that he might have worked in the establishment only for a very short time before the dispute was raised. He could not have even completed 480 days of work within a period of 24 calendar months as claimed in the Claim Statement.

13. Ext.W2 contains several wage receipts issued to Mariappan. It could be seen from these that he was receiving payments in the year 1997. The reverse side of each receipt contain certificates by the JTO that work has been done satisfactorily. He has approved payment of the required amount also. There are several such receipts for the year 1997-1998. Receipts for the years 1999 to 2002 also are available in this. So it could be seen from these receipts that Mariappan also has been working continuously in the establishment at least from the year 1997.

14. The petitioner has stated in the Claim Statement that without their knowledge the Respondents have brought in a contract system. There is the evidence given by WW1 as well as WW2 that they were always under the direct control of the Department of Telecom and subsequently the BSNL. It is the case of he Respondents that the concerned workmen were working only on contract basis. However, no documents are produced to show that the concerned workmen were working under a particular Contractor. MW1, the Assistant General Manager, BSNL, Virudhunagar has given evidence to the effect that there was ban on recruitment of casual labourers as per Ext.W2 and it was only through Contractor they were working However, what is revealed from the documents is that the workmen were under the control and supervision of the department and they were being paid directly by the Respondents also. If they were made contract workers on a later date without their knowledge, it was not proper. So the contract system, if any put forth by the Respondents could only be a sham one.

15. As could be seen from the evidence WW1 had been working for the establishment only from the year 2002. However, so far as WW2 and Mariappan are concerned they were there for a long time. As per the evidence both of them have started to work at least from the year 1996 and were continuously working.

16. The counsel for the Respondents have referred to the decision of the Apex Court in Uma Devi's case reported in 2006 4 SCC 1 that there cannot be regularization of the workmen as they were engaged without following due process of selection as envisaged in constitutional scheme. However, the dictum laid down in the Uma Devi's Case has been subsequently explained in the case MAHARASHTRA STATE ROAD TRANSPORT CORPORATION VS. CASTERIBE RAJYA PARIVAHAN KARMACHARI SANGHATHANA reported in 2009 2 SCC (L&S) 513. It has been held in the above decision that the powers of the Industrial and Labour Courts were not under consideration in Uma Devi case and issued like one pertaining to unfair labour case was not at all referred to, considered or decided in Uma Devi case. Unfair labour practice on the part of the employer in engaging them as Badlis, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privilege of permanent employees as provided in Item-6 of schedule IV and the power of Industrial and Labour Courts under Section-30 of the Act did not fall for adjudication or consideration before the Constitution Bench, it was held. It was also held that Uma

Devi does not denude the Industrial and Labour Courts of the statutory power to order permanency of the workers who have been victims of unfair labour practice on the part of the employer.

17. When considered in the light of the above proposition of law it could be seen that two of the workmen viz. Mariappan and Pandiarajan who had been made to work continuously in the establishment under the guise of contract worker or even otherwise are entitled to be regularized in the establishment. The establishment had been extracting work from them at a very low rate of wages for a long time. Even now, after years of work, they continue as workmen with very little amount as wages when compared to regular workers. There is no justification for this.

18. MW1, the Assistant General Manager of Virudhunagar SSA has been examined on behalf of the Respondent. He has stated that Ext.M1 is the notification which would show that BSNL Employees Union is given recognition only to represent the matters of its own members. According to the Respondent the Petitioner Union has no locus-standi to raise the dispute. WW2, an official of the Union has been examined to meet this case. Ext.W7 the bye-laws of the Union and Ext.W8 the resolution passed by the Union on 30th and 31st October, 2001 are marked through this witness. WW2 has stated that as per the bye-laws of the Union it is entitled to espouse the cause of BSNL employees in general. Apart from that it has decided to espouse the cause of all workmen who had not been regularized, by Ext.W5 resolution. So the contention that the Union is not competent to espouse the cause of the workmen will not hold good.

19. In view of the discussion above WW2, Pandiarajan and Mariappan shall be deemed to have been regularized in the service of the Respondents in their then position from the date on which the dispute was raised. They will be entitled to the difference in pay consequent to such regularization. The arrears of pay due accordingly shall be paid to them within two months of the publication of the Award. The amount will carry interest @ 6% per annum from the date of the Award, if not paid in time.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1 st Party/Petitioner Union	:	WW1, Sri P.Vanamoorthilingam WW2, Sri P.Pandairaj WW3, Sri K. Srinivasan
For the 2 nd Party/Respondents	:	MW1, Sri M.Balasubramaniam

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	16.09.1998	Identity Slip
Ext.W2 (Series)	1996 1997 1998 1999 2000 2001 2002	Pay receipts of T. Mariappan
Ext.W3 (Series)	2000 2001 2002 2003	Working particulars of P.Vanamoorthilingam
Ext.W4 (Series)	2004 2005	Working particulars of P.Pandiaraj
Ext.W5	1995	Payment Receipt ACG 17 of P.Pnadiaraj
Ext.W6	-	Annexure to the 2(K) of Reference
Ext.W7	-	Bye-laws of the Union
Ext.W8	30/31 Oct'2001	Resolution of the union

Ext.W9	21.03.2006	Lok Sabha Admitted Provisional Starred Question Dy. No.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularization of contract Workers.
--------	------------	--

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours.
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	17.10.2005	Copy of the agreement entered into between BSNL and M/s. Kalai Industrial Security Services
Ext.M10	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group "D" employees category.

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 940.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रिंसिपल, आरसीजी-सीटीटीसी, बीएसएनएल, चेन्नई व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 29/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/27/2002-आईआर (डीयू)]

राजेन्द्र जाशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 940.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 29/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the The Principal, RCG-CTTC, BSNL, Chennai and others, and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/27/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**Wednesday, the 22nd March, 2017**Present : K.P. PRASANNA KUMARI, Presiding Officer**

Industrial Dispute No. 29/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Two Others and their workman)

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
BSNL Employees Union
No. 3/71, 4th Street, Raghava Nagar,
Madipakkam
Chennai-600091

AND

1. The Principal : 2nd Party/1st Respondent
RCG-CTTC, BSNL
Meenambakkam
Chennai-600027
2. The Chairman & Managing Director : 2nd Party/2nd Respondent
BSNL, Sanchar Bhawan
New Delhi-110001
3. The Chief General Manager, Telecom : 2nd Party/3rd Respondent
BSNL, Tamil Nadu Circle
Anna Salai
Chennai-600002

Appearance:

For the 1st Party/Petitioner Union : M/s K.M. Ramesh, Advocates
For the 2nd Party/Respondents : Sri D. Simon, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40011/27/2002-IR (DU) dated 07.01.2003 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the non-absorption of the casual employees as per Annexure as claimed by the BSNL Employees Union is legal and justified? If not, to what relief the workmen are entitled to?”

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 29/2003 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a registered trade union having substantial number of permanent workmen working in BSNL as its members. The workmen concerned in the dispute are doing the work of house-keeping, cable joining and line work and operation and maintenance of electro-mechanical services, etc. They are working directly under the control and supervision of BSNL. They are doing the very same work carried out by the permanent employees of the Telecom Department. The work done by them is perennial in nature. The workmen employed to do the aforesaid functions cannot be treated as contract labour. The so-called contract system is sham. The administrative control of the workmen remains with the telecom department. The alleged contractors are regular staff of the Respondents. There are regular sanctioned posts for regularizing the workmen concerned in the case. The BSNL is an establishment as per the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned workmen have to be made permanent on completion of 480 days in a period of 24 calendar months. An order may be passed directing to regularize and absorb the concerned workmen in the service of the Respondents from the date of their joining in service, together with continuity of service and other attendant benefits.

4. The Respondents have filed Counter Statement contending as below:

The petitioner has no *locus-standi* to espouse the cause of persons who are not employees of the Respondents. The Contractors have not been impleaded as parties. The dispute is liable to be dismissed for non-joinder of necessary

parties. The claim of the petitioner that the employees are doing same work as that of the regular employees, that the work done by them is perennial in nature, that there is direct control and supervision of the workmen by the Respondents, that the Contractors are mainly Offices of the Respondents, etc. are incorrect. It is admitted by the petitioner that the concerned workmen are contract labourers. So there is no question of absorption or regularization. The case of the petitioner that the contract is sham is not correct. There is no camouflage as alleged. The Respondents never exercised control or supervision over the concerned workmen. The Respondents are not organizing the work of contract labour. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and documents marked as Ext.W1 and Ext.W2. No evidence either oral or documentary was adduced on the side of the Respondents.

6. **The point for consideration is:**

Whether the concerned workmen are entitled to absorption as claimed?

The Point

7. The dispute is raised on behalf of 7 workmen whose names are given in the annexure to the schedule of reference. It is the case of the petitioner that all the concerned workmen are doing the work of house-keeping, cable joining, operation and maintenance of electro-mechanical services, etc. As seen from the annexure to the schedule of reference, four of the workmen have started to work for the Respondents in the year 2000 and the other three in the year 2001 on different dates. The case of the petitioner is that though the concerned workmen are working under the so-called Contractors, the contract system is only a camouflage and they were directly under supervision and control of the Respondents. Absorption in the establishment is claimed as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act and also on the basis that the so-called contract system is only a sham one.

8. One of the workman has given evidence as WW1. The Proof Affidavit filed by this witness reveals that the other 6 workmen named in the schedule of reference are not interested anymore in the proceedings. He has given evidence for himself only.

9. WW1 has stated in his Affidavit that he was doing electrical maintenance work at Rajiv Gandhi Memorial Telecom Centre, Meenambakkam from the year 2000. He was doing electrical maintenance work everyday regularly. He is said to be working for 10 hours a day at present. According to him a Sub-Divisional Engineer and Junior Telecom Officer used to allot work to him. He has further stated that though he is working directly under the control of the officials of the Respondents, he is branded as a contract labour. But the so-called Contractor did not allot any work to him. He will be coming on the pay day and collecting the amount from the officials and disbursing the same. The witness has given the names of the officials who are said to have extracted work from him. He has stated that he is entitled to be absorbed in BSNL.

10. Though tall claims are made by WW1 in his Proof Affidavit, documents are lacking to prove his case. Ext.W1 is an entry pass produced by the petitioner. This states that it is valid upto 15.12.2001. However, the entry pass does not reveal the name of the person to whom the same is given. In any case, there is nothing to show that the document has come into existence before the dispute was raised. Though the exact date on which the dispute was raised was not available it could be seen from the schedule of reference that the report regarding failure of conciliation is dated 28.05.2002. The dispute must have been raised sometime prior to this.

11. Ext.W2, the second document also will not serve the purpose of the case. This consists of sheets from the Attendance Register of different years of 2008 and subsequent period. The name of WW1 of course finds a place in these sheets. But one does not know if this pertains to the BSNL or of the Contractor. There is nothing to show that WW1 had started to work for the Respondents from the year 2000 and had continued to work so.

12. The claim of the petitioner is that the concerned workmen had been continuously working for 480 days during 24 calendar months and is entitled to the benefit as per the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act and also entitled to be absorbed because the so-called contract system is a sham one. However, there is no evidence for any of these. So none of the workmen including WW1 are entitled to any relief.

In view of the discussion above, the reference is answered against the petitioner. An Award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri G. Rajinikanth

For the 2nd Party/Respondents : Nil

Documents Marked:**On the petitioner's side**

Ex.No.	Date	Description
Ext.W1	-	Copy of Entry pass with photo
Ext.W2	-	Copies of Available Attendance Registers

On the Management's side

Ext.No.	Date	Description
	Nil	

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 941.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, बीएसएनएल, कुमाकोणम और अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 27/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/25/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 941.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 27/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, BSNL, Kumakonam and others, and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/25/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,****CHENNAI**

Wednesday, the 22nd March, 2017

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 27/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Two Others and their workman)

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
 BSNL Employees Union
 No. 3/71, 4th Street, Raghava Nagar,
 Madipakkam
 Chennai-600091

AND

1. The General Manager : 2nd Party/1st Respondent
BSNL,
Kumbakonam-612001
2. The Chairman & Managing Director : 2nd Party/2nd Respondent
BSNL, Sanchar Bhawan
New Delhi-110001
3. The Chief General Manager : 2nd Party/3rd Respondent
BSNL, Tamil Nadu Circle
Anna Salai
Chennai-600002

Appearance:

For the 1st Party/Petitioner Union : M/s K.M. Ramesh, Advocates

For the 2nd Party/Respondents : Sri D. Simon, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40011/25/2002-IR (DU) dated 07.01.2003 and Corrigendum dated 01.01.2004 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the non-absorption of the casual employees as per annexure as claimed by the BSNL Employees Union is legal and justified? If not, to what relief the workmen are entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 27/2003 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The employees concerned in the dispute are doing the work of housekeeping, delivery of telegram, etc. They were working under the control and supervision of the Respondents. The work done by the employees is perennial in nature. Sponsorship from Employment Exchange is not required for Class-IV employees. The concerned employees cannot be treated as contract employees. The so-called contract system is a sham one. Supervision and control over the concerned workmen were exercised by the officials of the Respondents and not the so-called Contractors. There are sanctioned posts for regularizing the employees concerned in this case. The Respondent establishment is one coming under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned employees have completed more than 480 days in service and are to be made permanent. An award may be passed holding that the workmen are entitled absorption in the service of the Respondents from the date of their joining service alongwith continuity of service and attendant benefits.

4. The First Respondent has filed Counter Statement on behalf of other Respondents as well contending as below:

The petitioner has no *locus-standi* to espouse the cause of persons who are not employees of the Respondents. The petitioner is not a recognized union also. The Contractors have not been impleaded as parties. So the dispute is having the defect of non-joinder of parties also. The claim of the petitioner that the concerned workmen are doing the same work as done by regular employees, that the work is perennial in nature, that there is direct control and supervision by the Respondents, that the Contractors are Officers of the Respondents, etc. are denied as incorrect. The petitioner has admitted the workmen as contract labourers and at the same time deliberately described them as casual labourers. These are inconsistent pleas. It is denied that the concerned workmen are doing the work of housekeeping and delivery of telegrams. The allegation that the contract is sham is not correct. There is no camouflage in the contract. If the petitioner's claim that the workmen have worked for more than 480 days under the Contractor is true they are at liberty to claim permanency with the Contractor. The petitioner is not entitled to any relief.

5. The Petitioner Union has filed a rejoinder denying the averments in the Counter Statement and reiterating the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and WW2 and MW1 and also documents marked as Ext.W1 to Ext.W24 and Ext.M1 to Ext.M12.

7. **The point for consideration is:**

“Whether the concerned workmen are entitled to regularization and absorption as claimed?”

The Point

8. The petitioner union has raised the dispute on behalf of 5 workmen whose names are given in the appendix to the schedule of reference. The appendix states that the workmen have started to work with the Respondents, one in 1974 and the Others in 1993, 1994 and 1996. The description of the work done by them is shown as Sweeping and Cleaning and the work of Waterboy.

9. One of the workman who is shown as S.No. 1 in the appendix to the schedule of reference is examined as WW1. He has stated that he is giving evidence on behalf of the other 4 workmen as well. The Circle Treasurer of the Petitioner Union is examined as WW2. The evidence of this witness is intended to show that the petitioner has the right to espouse the cause of the concerned workmen. Evidence regarding the main issue is by WW1 only.

10. The case of the Petitioner Union is that the concerned workmen have started to work with the Respondents directly and were doing the work of Cleaning, Sweeping, etc. and also the work of delivery of telegrams. It is stated in the Claim Statement that the concerned workmen were under the direct control of the Respondents. It is further stated that if any contract system was introduced by the Respondents, subsequently it is only a camouflage. To substantiate this, it is stated that the so-called Contractors are only employees of the Respondents itself and that the petitioner or the concerned workmen are not aware of the names of the Contractors or under which Contractors they are put as workmen. There is also a contention for the petitioner that all the workmen having completed more than 480 days of work in 24 calendar months are entitled to be made permanent in view of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act also.

11. WW1 has of course stated in his evidence that all the concerned workmen including him have been working in the establishment directly and they are still continuing. However, the question is whether the documents produced are sufficient to establish this case. Before examining the documents produced on behalf of WW1 himself, the documents pertaining to other workmen concerned could be examined. A. Abel is S.No. 4 in the appendix to the schedule of reference. Ext.W1 is a certificate issued by the Sub-Divisional Officer of Kumbakonam to the effect that Abel was “working as Part-Time Sweeper-cum-Waterboy in his office on daily wages under contract labour in leave vacancies on temporary basis”. Ext.W2 (series) contains several payment receipts. Page-3 shows that Abel had received some amount from Sub-Divisional Office, Telecoms, Kumbakonam on 01.11.1994 for the duty performed as Scavenger-cum-Sweeper for 31 days. Page-4 contains another such receipt issued on 01.12.1994. However, the other receipts in the series are in some other names other than Abel. What WW1 has stated is his affidavit in lieu of examination is that all these are receipts that were issued by the Respondents to Abel himself in different names. However, this evidence of WW1 could not be accepted. Abel himself had not come forward to give evidence. Other than the documents referred to earlier, no documents are available to show that he was continuously working in the establishment from 1994. His name does not appear even in Ext.W5, the document pertaining to the change of charge of the Telegraph Office, Kumbakonam in July 1996 though this contains the name of WW1 himself along with some other persons as those working as casual labourers. Thus no documents are available to show that Abel has been working continuously in the establishment. WW1 has of course stated that he is still working but there is no evidence as to in which capacity he is working, whether there was continuous employment of him by the Respondents or if he has subsequently joined the establishment again. In the absence of any evidence the case of the petitioner for absorption of Abel in any case could not be entertained.

12. K. Muruganandam, R. Suresh and N. Soundararajan are the other workmen named in the appendix to the schedule of reference. However, no documents are available pertaining to these workmen as well. The case advanced on their behalf that they have started to work in the establishment from 1993 or 1994 is not proved. The concerned workmen themselves did not come forward to give evidence. The oral evidence given by WW1 is not sufficient to establish the case.

13. What are the documents available in respect of WW1 Nityanandan? Reference was already made to Ext.W5 in which he is shown as a casual labourer. Ext.W6 contains a series of ACG-17 receipts for making payment to Nityanandam. These are of 1993 and 1994. These certainly establish that WW1 had started to work with the Respondents even in the year 1993. Ext.W7 is a letter issued by the SDE to Nityanandan describing him as contract labour. This states that the Divisional Engineer will be holding enquiry on the charges against one Soundararajan and his evidence is required. This letter of March 1998 proves that WW1 was continuing in the establishment. Ext.W8 is another letter asking WW1 to give evidence in the enquiry in the charges against Soundararajan. Ext.W9 is a certificate to the effect that no amount has been paid to Nityanandan as traveling expenses for giving evidence in the enquiry proceedings. Ext.W10 is a letter dated 26.05.2000 by the JTO to Nityanandan asking him to give a report on the happenings when he opened JTO's room for cleaning on 25.05.2000. Ext.W11 shows that WW1 has been delivering telegrams also in 2000. This contains signature of WW1 for having received amount towards delivery of telegrams.

Ext.W12 is also of the year 2000 for having received amount from the Telegraph Office, Kumbakonam. Ext.W13 & Ext.W14 are also such receipts. Ext.W16 (series) are recreation club receipts in the name of Nityanandan in the year 2003, etc. Ext.W19 (series) also established the case of WW1 that he had been working in the establishment for a long time. All these are ACG-17 receipts issued by different Officers of the establishment. Payment is seen made to WW1 for office cleaning, carrying water, etc.

14. The case that is put forth by the Respondents is that the workmen concerned are all working as contract workers and there is no employer-employee relationship between them. No doubt in some of the documents WW1 is referred to as a contract worker. However, this is only at a later stage. Even then the documents produced are sufficient to prove that control was exercised directly by the Respondents and payment was also made by the Respondents directly. This itself would show that contract if any resorted to at a later stage is a sham one.

15. Ext.W13 is seen issued to WW1 directly by the Assistant Superintendent asking to furnish explanation for the missing receipt book. This memo of 1993 shows nothing but direct control of Respondents over WW1. Ext.W4 shows recovery of excess wages paid to WW1 in 1993 which also shows direct employment of WW1 by the Respondents. In Ext.W5 of 1996 referred to earlier WW1 is described as casual labour and not as contract labour. As per Ext.W6 (series) payments are seen made by the Respondents directly to WW1. Again, Ext.W7 letter has been directly issued by the Enquiry Officer asking WW1 to give evidence, also indicating control of WW1 by the Respondents. Ext.W8 and Ext.W9 issued in continuation of Ext.W7 are also indicative of this. By Ext.W10 a report from WW1 is sought for certain incident that occurred in May 2000. As seen from Ext.W11 payments are made directly by the JTO to employees including WW1 for delivery of telegrams. As per Ext.W12 to Ext.W14 payment is seen made directly to WW1 even in the year 2000. These documents are indicative of direct relationship between WW1 and the Respondents as employee and employer. When there is such overwhelming evidence in respect of WW1 through the documents produced to show that he was controlled by the Respondents and was being paid by the Respondents, the burden shifts on the Respondents to prove that WW1 was actually a contract employee and there was no direct relationship between them as claimed. Though MW1 is examined by the Respondents, other than the oral evidence of MW1 no other evidence is available in this respect. It is clear that WW1 was working as a casual employee for years. With the object of depriving him of the status and privilege of a permanent workman, this must have done.

16. There is a contention for the Respondents in the Counter Statement that the Union has no capacity to represent the contract workmen. MW1, the Divisional Engineer examined on behalf of the Respondents has stated during his evidence that the casual labourers could not have become members of the Union. Ext.M3 circular is produced to prove this. MW1 has also stated that the concerned workmen who are not even casual labourers cannot become members of the Union and for this reason the Union is not competent to represent them in this dispute also. The petitioner has examined WW2, the Circle Treasurer of the Union to meet this contention. As seen from his evidence earlier there were six unions for the workmen. However, these Unions got merged with the Petitioner Union. In the Working Committee Meeting of the Union it was decided to espouse the cause of the concerned workmen. The resolution of the Union is marked as Ext.W10. When such a resolution is there the Petitioner Union is quite competent to raise the dispute on behalf of the concerned workmen. So the contention that the Union is not competent to espouse the cause of the workmen will not hold good. The workman who have proved eligibility by establishing that he was working with the Respondents for a long time is entitled to relief.

17. On the basis of the above finding WW1, Nithiyanantham, S.No. 1 is entitled to relief as claimed. Accordingly, an Award is passed as below:

The Respondents are directed to absorb and regularize Nithiyanantham in service in the then position w.e.f. 18.01.2002. He is entitled to the difference in the salary due to him on account of such absorption and regularization. The same shall be paid to him within two months of the publication of the Award. In default, the amount will carry interest at the rate of 6% per annum from the date of the Award.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1 st Party/Petitioner Union	:	WW1, Sri A.Nithiyanantham WW2, Sri K. Srinivasan
For the 2 nd Party/Respondents	:	MW1, Sri A. Selvaraj

Documents Marked:**On the petitioner's side**

Ex.No.	Date	Description
Ext.W1	27.04.1994	Abel, Part time Sweeper under Telecom
Ext.W2	-	Payment receipts (10 Nos.)
Ext.W3	15.11.1993	Memo
Ext.W4	10.08.1993	Excess Payment Voucher
Ext.W5	31.07.1996	Letter of SSTT Thanjavur Telecom Distict, Thanjavur to the SDE (Groups) Kumbakonam
Ext.W6	-	ACG-17 signed by Sivasankaran-1994
Ext.W7	03.03.1998	Copy of the letter sent by Divisional Engineer (Maintenance Urban) Rajarathanam
Ext.W8	16.10.1998	Copy of the letter sent by Divisional Engineer (Maintenance Urban) Rajarathanam
Ext.W9	29.10.1998	Copy of the letter sent by Divisional Engineer (Maintenance Urban) Rajarathanam
Ext.W10	26.05.2000	Memo
Ext.W11	-	Telegram delivery payment couchers Jan. & Feb. 2000
Ext.W12	14.07.2000	Drawal of cash by the petitioner
Ext.W13	17.07.2000	Drawal of cash by the petitioner
Ext.W14	18.07.2000	Drawal of cash by the petitioner
Ext.W15	-	Dispute raised u/s S.2(K) of the I.D. Act, before the conciliation officer
Ext.W16	-	Recreation Club receipts-5Nos.
Ext.W17	-	Particulars of Employees
Ext.W18	20.08.2004	Letter of the BSNL, CRDA Telecom District to the SDE, Kumbakonam
Ext.W19	1996	ACG 17
	1997	ACG 17
	1998	ACG 17
Ext.W20	10.09.2003	Registration Certificate under the Abolition of Contract Labour Act.
Ext.W21	26.02.2005	Agreement copy
Ext.W22	-	Bye-laws of the Union
Ext.W23	30/31 st Oct'2001	Resolution of the union
Ext.W24	21.03.2006	Lok Sabha Admitted Provisional Starred Question Dy. NO.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularisation of contract Workers.

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours.
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions

Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	29.09.2005	Award of Tender for the service contract of House keeping Works for Zone-1 GM (Office) Kumbakonam (Main and Annex Building) of CRDA SSA, KMB for the year 2005-2006-reg.
Ext.M10	27.03.2003	The Contract Labour) Regulation & Abolition) Act. 1970 and Central Rules, 1971 made there under-Grant of Certificate Registration-reg.
Ext.M11	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group “D” employees category.
Ext.M12	01.07.2006	Model Bill for Labours.

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 942.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसूर मैसूर मिनरल्स लिमिटेड के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 02/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29025/2/2017-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 10th April, 2017

S.O. 942.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 02/2011) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29025/2/2017-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 28th FEBRUARY, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

ID No. 02/2011

I Party

Sh. Range Gowda
S/o Bore Gowda,
MML Worker, Volegerehalli Village
and Post, Bagur Hobli, CR Patna Tq.
Hassan District.

II Party

The Managing Director,
Mysore Minerals Limited,
No. 39, M G Road,
Bangalore.- 560001

AWARD

1. The brief details mentioned in the Claim Statement of the I Party are as follows:

The I Party respectfully submits that on 19.10.1978, I Party joined the service of the II Party Management at its Mining Unit viz., Byrapura Chromite Mines and Later on, transferred to Bageshpur Mines and again transferred to Bhaktarahalli Mines, Kembal Post, Channaryapatna Taluk, Hassan District as a Mining worker. At the time of joining

his service on 19.10.1978, the I Party has furnished his age as 32 years i.e, his date of birth being 19.10.1952, as per the Horoscope maintained by his parents as per the family tradition and custom. The II Party accepted the same as true, in the absence of Certificate of Registration of birth. The said date of birth, infact, has been entered in all the statutory records like EPF, B-register and Service records, etc. Further, on 06.06.1998 the II Party, Bhaktarahalli Mines Officials, orally refused to allow the I Party to do his work w.e.f 06.06.1998 on the plea that the I Party has reached his superannuation age of 58 years as per the so called illegal Medical Examination. The copy of the Termination Order dated 09.06.1998 is submitted as Annexure-‘A’. Immediately the I Party met the II Party Mines Officials, number of times and explained to them about his correct age and requested them to permit him to work till he attains the age of superannuation i.e, 58 years. After illegal termination, the I Party has faced unemployment problem and financial hardship, and also his family members. The entire family has depended only upon the earnings of the I Party in the II Party Organization. The II Party Management similarly, has prematurely retired the co-workers of the I Party on the ground of Medically un-fitness and also, as per the age certified by the Medical Officer. Some of the co-workers have challenged their pre-mature retirement and age certification before the Hon’ble High Court of Karnataka, viz.,

- 1) Writ Petition No. 5615/2001 between Smt. K.Dundamma Vs MML, and the same Management of II Party challenged the same in Writ Appeal No. 3460/2001 C/W W.No. 3459/2001. The said Appeal has been rejected on 12.06.2002 confirming the single Judge order dated 29.03.2001. In view of the said decision the Management reinstated the above mentioned pre-matured retired employee with payment of back wages, with continuity of service thereon.
- 2) Writ Petition No. 26101/2001 C/W W.P.Nos. 23798/2001, 23797/2001 & 23794/2001 filed by Sri. V.C. Range Gowda and 8 others Vs MML, have been allowed on 01.06.2006.

On account of the illegal payment and other lapses, in the II Party Management, it has to face the administrative problems. The II Party adopted its own tactics, ways and means for terminating the Mining Workers in short cut methods in an illegal and irregular manner, by adopting anti-labour and un-fair labour practice and victimized the I Party and other co-workers by removing them en-masse by resorting to so-called Medical Examination. The II Party and also the so-called Medical Examiner have colluded with each other and utterly failed to determine the age of I Party in a scientific manner. The action of the II Party is neither fair nor done in a proper manner but conducted as an eye wash and also, as an empty formality with a predetermined mind and also, with an evil intention to stop the I Party from services. The II Party having not followed the Mandatory provisions of Section 25 F, G, H & N of the Industrial Disputes Act, 1947 and Rules 78 and 79 thereon, the action of the Management is, therefore, void-ab-initio as laid by the Hon’ble Supreme Court of India in the case of Sundaramani Vs State Bank of India, Santhosh Gupta Vs State Bank of India, Robert D’Souza Vs Southern Railway, K.S.R.T.C.- Bangalore Vs Boraiaha and others and also violated the Provisions of Industrial Dispute Act, 1947. The II Party Management is not justified in retrenching the service of the I Party w.e.f. 06.06.1998, in summary manner, without any regard to the principal of Natural justice and fair play. The I Party belongs to socially and economically weaker section and also, he is the Rural based worker and used to work in Mines, which is in a remote place of the village and the I Party is also an illiterate worker belonging to Economically weaker section & not a matching party to fight against the II Party, for the injustice done by the II Party. Under the I.D. Act there is no Limitation prescribed for raising the dispute, the Article 137 of schedule to the Limitation Act is not applicable to proceedings under I.D. Act. This point is repeatedly decided by the Hon’ble Supreme court of India and Hon’ble High Courts of various states, viz.,

- 1) LLJ-II-2001-pg 788-792 [SC]
Sapan Kumar Pandit Vs U.P. State Electricity Board and others.
- 2) LLJ-I-1999-pg 1260-1265 [SC]
Ajaib Singh Vs Sirhind Co-operative Marketing-cum- processing service society.
- 3) LLJ-II-1999-pg 482-483 [SC]
Mahavir Singh Vs U.P. State Electricity Board and others.
- 4) LLJ-I-2003-pg 415-414 [MP]
Ramadhar Tiwari Vs Union of India and others.
- 5) LLJ-I-1994-pg 468-471 [All]
U.P. State Spinning Mills Co. Vs State of U.P. & others.
- 6) LLJ-II-2003- pg 1143-1145 [Ori]
Management of Aska Co-operative Central Bank Ltd. VS State of Orissa.
- 7) LLJ-I-2002- pg 204-206 [Mad]
E.E. Construction Division 2, Mannarpuram, Trichy and Another Vs M. Gajapathy and Another.

- 8) LLJ-I-2002-pg 1079-1081 [Del]
Mangal Singh Vs Presiding Officer, Industrial Tribunal No. 1, Delhi and Another.
- 9) LLJ-I-2002-pg 1129-1132 [Bom]
Haribhau S/o. Gaman Waghchaure Vs State of Maharastra and Another.

Therefore, it is prayed to pass an Award holding that the action of the II Party Management is not justified in Terminating the services/premature superannuating of the I Party services w.e.f 06.06.1998 and direct the II Party to reinstate the I Party, with continuity of service, with payment of full back wages and other consequential benefits from the date of termination i.e., 06.06.1998 till providing employment and further Award of cost of this proceedings in the interest of justice and equity.

2. The II party has not filed the objection for the said claim statement of I party, though sufficient and adequate opportunities have been granted to the II Party. Further Vakalat has been filed on behalf of II Party on 06.07.2011 itself. Again on 04.10.2016 the Office Superintendent of II Party has appeared before this Court and also prayed time to file Objection for the claim statement filed by the I Party. But, objection to the claim statement has not been filed by II Party, without any valid reasons.

3. The crucial point that arises for consideration in the present matter is, as follows:-

‘Whether the action of the II Party, namely, M M L in Terminating the services of I Party/Sh. Range Gowda w.e.f 06.06.1998, is justified? If not, to what relief, the I Party is entitled to get?’

4. Analysis, Discussions And Findings with regard to the above mentioned point:-

The WW-1 namely, Sh. Range Gowda/Workman has examined himself as WW-1 and submissions made in the claim statement have been stated by him. Further, the following Annexures have been filed along with the claim statement.

Sl. No. of Annexures	Date	Documents exhibited by I Party
A	09.06.1998	Termination Order issued by II Party
B	29.03.2001	Writ Petition No. 5615/2001 (S-RES) order
C	12.06.2002	Writ Appeal No. 3460/01 C/W W.A No. 3459/01(S) order
D	01.06.2006	Writ Petition No. 26101/01 C/W W.P. No. 23798/01, 23797/2001& 23794/2001

As Per Annexure ‘A’, Termination Order has been passed by the II Party dated 09.06.1988. Further, along with evidence the workman has filed Ex W-1, the Circular relating to the enhancing of the superannuation age from 58 years to 60 years dated 22.08.2008. The I Party joined the Organisation on 19.10.1952 and Terminated with effect from 06.06.1998. In the above mentioned facts and circumstances, the I Party is entitled to get back wages from 06.06.1998 to till the date of 19.10.2012, namely, on reaching the age of superannuation. Further, it is seen that, the II Party/Management is adopting super technical and hyper technical measures, so as to stop the workman from getting the legal benefits. Further, the intension of the legislature in enacting the Social Welfare provisions of Industrial Dispute Act would be defeated, if the untenable actions of the II Party/Management are not taken into consideration very seriously, and also the legal benefits of the workman are denied. The I Party has clearly established that the II Party has terminated the service of I Party without following the due process of law and also principles of natural justice, fairness and reasonableness and hence, the I Party is entitled to get full backwages and other consequential benefits from the date of termination, i.e., 06.06.1998 to 19.10.2012. Thus, the point is answered, accordingly. Hence, the following award, is passed:-

AWARD

The II Party/Management is not justified in Terminating the services of I party/Range Gowda with effect from 06.06.1998 and II Party is directed to pay the full back wages and other consequential benefits from the date of termination, i.e., 06.06.1998 to 19.10.2012 to the I party-workman, and the present reference is answered, accordingly, without cost for the above mentioned peculiar facts and circumstances.

(Dictated, transcribed, corrected and signed by me on 28th February, 2017)

V. S. RAVI, Presiding Officer

Witness examined on behalf of I Party

WW-1	Sh. Range Gowda, I Party
------	--------------------------

Documents Exhibited on behalf of I Party

Exhibits	Date	Description of Document
Ex W-1	22.08.2008	Circular relating to enhancing the superannuation age from 58 years to 60 years for Mill workers.

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 943.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 03/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29025/1/2017-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 10th April, 2017

S.O. 943.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 03/2011) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29025/1/2017-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**

DATED : 28th FEBRUARY, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

ID No. 03/2011

I Party

Smt. Kempamma
W/o Sri G. Thimmaiah,
MML Worker, Thatavali Colony
Village, Near Bukkivare Village
Kempasagara Post, Magadi Tq.
Ramanagara District.

II Party

The Managing Director,
Mysore Minerals Limited,
No. 39, M G Road,
Bangalore.- 560001

AWARD

1. The brief details mentioned in the Claim Statement of the I Party are as follows:

The I Party respectfully submits that on 03.11.1975, I Party joined the service of the II Party Management at its Mining Unit viz., Haranahalli Managnese Mines and Later on, transferred to Thimmappanagudi Iron ore Mines and again transferred to Nidgal Granite Quarry, Kembal Post, Channaryapatna Taluk, Hassan District as a Mining worker. At the time of joining her service on 03.11.1975, the I Party has furnished her age as 29 years i.e., her date of birth being 10.02.1946, as per the Horoscope maintained by her parents as per the family tradition and custom. The II Party accepted the same as true, in the absence of Certificate of Registration of birth. The said date of birth, infact, has been entered in all the statutory records like EPF, B-register and Service records, etc. The copy of the Confirmation Letter issued by the II Party to the I Party mentioning her date of birth and year of joining the service is also produced as Annexure-‘A’. The I Party is entitled to continue in the service with the II Party up to 10.02.2005 i.e., upon reaching

the age of Superannuation i.e., 58 years in the II Party Organisation. Further, on 10.07.1998 the II Party, Nidgal Granite Quarry Officials, orally refused to allow the I Party to do her work w.e.f 10.07.1998 on the plea that the I Party has reached her superannuation age of 58 years as per the so called illegal Medical Examination. The copy of the Termination Order dated 13.07.1998 is produced as Annexure-‘B’. Immediately the I Party met the II Party Mines Officials, number of times and explained to them about her correct age and requested them to permit her to work till she attains the age of superannuation i.e, 58 years. After illegal termination the I Party has faced unemployment problem and financial hardship, and also her family members. The entire family has depended only upon the earnings of the I Party in the II Party Organization. The II Party Management similarly, has prematurely retired the co-workers of the I Party on the grounds of Medically un-fitness and also the age certified by the Medical Officer. Some of the co-workers have challenged their pre-mature retirement and age certification before the Hon’ble High Court of Karnataka, viz.,

- 1) Writ Petition No. 5615/2001 between Smt. K.Dundamma Vs MML, and the same Management of II Party challenged the same in Writ Appeal No. 3460/2001 C/W W.No. 3459/2001. The said Appeal has been rejected on 12.06.2002 confirming the single Judge order dated 29.03.2001. In view of the said decision the Management reinstated the above mentioned pre-matured retired employee with payment of back wages, with continuity of service thereon.
- 2) Writ Petition No. 26101/2001 C/W W.P.Nos. 23798/2001, 23797/2001 & 23794/2001 filed by Sri. V.C. Range Gowda and 8 others Vs MML, have been allowed on 01.06.2006.

On account of the illegal payment and other lapses, in the II Party Management, it has to face the administrative problems. The II Party adopted its own tactics, ways and means for terminating the Mining Workers in short cut methods in an illegal and irregular manner adopting anti-labour and un-fair labour practice and victimized the I Party and other co-workers by removing them en-masse by resorting to so-called Medical Examination. The II Party unilaterally refused, employment to the I Party before the age of superannuation even though the I Party is hale and healthy and entitled to work up to 10.02.2005. Hence, the so-called Medical Examination conducted by the II Party is irregular and it is not having any legal sanctity and not sustainable in Law as it is violative of Rule 29-C. The II Party and also the so-called Medical Examiner have colluded with each other and utterly failed to determine the age of I Party in a scientific manner. The action of the II Party is neither fair nor done in a proper manner but conducted as an eye wash and an empty formality with a predetermined mind and also, with an evil intention to stop the I Party from services. The II Party having not followed the Mandatory provisions of Section 25 F, G, H & N of the Industrial Disputes Act, 1947 and Rules 78 and 79 thereon, the action of the Management is, therefore, void-ab-initio as laid by the Hon’ble Supreme Court of India in the case of Sundaramani Vs State Bank of India, Santhosh Gupta Vs State Bank of India, Robert D’Souza Vs Southern Railway, K.S.R.T.C.- Bangalore Vs Boraiaha and others and also violated the Provisions of Industrial Dispute Act, 1947. The II Party Management is not justified in retrenching the service of the I Party w.e.f. 10.07.1998, in summary manner, without any regards to the principal of Natural justice and fair play. The I Party belongs to socially and economically weaker section and also, she is the Rural based worker and used to work in Mines, which is in a remote place of the village and the I Party is also an illiterate worker belonging to Economically weaker section & not a matching party to fight against the II Party, for the injustice done by the II Party by way of approaching various Labour Authorities other than repeatedly requesting the Officials of the II Party Mines for permitting her to work on request basis. Under the I.D. Act there is no Limitation prescribed for raising the dispute, the Article 137 of schedule to the Limitation Act is not applicable to proceedings under I.D. Act. This point is repeatedly decided by the Hon’ble Supreme court of India and Hon’ble High Courts of various states viz.,

- 1) LLJ-II-2001-pg 788-792 [SC]
Sapan Kumar Pandit Vs U.P. State Electricity Board and others.
- 2) LLJ-I-1999-pg 1260-1265 [SC]
Ajaib Singh Vs Sirhind Co-operative Marketing-cum- processing service society.
- 3) LLJ-II-1999-pg 482-483 [SC]
Mahavir Singh Vs U.P. State Electricity Board and others.
- 4) LLJ-I-2003-pg 415-414 [MP]
Ramadhar Tiwari Vs Union of India and others.
- 5) LLJ-I-1994-pg 468-471 [All]
U.P. State Spinning Mills Co. Vs State of U.P. & others.
- 6) LLJ-II-2003- pg 1143-1145 [Ori]
Management of Aska Co-operative Central Bank Ltd. VS State of Orissa.

- 7) LLJ-I-2002- pg 204-206 [Mad]
E.E. Construction Division 2, Mannarpuram, Trichy and Another Vs M. Gajapathy and Another.
- 8) LLJ-I-2002-pg 1079-1081 [Del]
Mangal Singh Vs Presiding Officer, Industrial Tribunal No. 1, Delhi and Another.
- 9) LLJ-I-2002-pg 1129-1132 [Bom]
Haribhau S/o. Gaman Waghchaure Vs State of Maharastra and Another.

Therefore, it is prayed that this Court may be pleased to pass an Award by holding that the action of the II Party Management is not justified in Terminating the services/premature superannuating of the I Party services w.e.f 10.07.1998 and to direct the II Party to reinstate the I Party, with continuity of service, with payment of full back wages and other consequential benefits from the date of termination i.e., 10.07.1998 till providing employment and further Award of cost of this proceedings in the interest of justice and equity.

2. The II Party has not filed the objection to the claim statement of the I Party, though sufficient and adequate opportunities have been granted to the II Party. Further Vakalat has been filed on behalf of II Party on 06.07.2011 itself. Again on 04.10.2016 the Office Superintendent of II Party has appeared before this Court and also prayed time to file Objection for the claim statement filed by the I Party. But the objection to the claim statement has not been filed by II Party, without any valid reasons.

3. The crucial point that arises for consideration in the present matter is, as follows:-

‘Whether the action of the II Party, namely, M M L in Terminating the services of I Party/Smt. Kempamma is justified? If not, to what relief, the I Party is entitled to get?’

4. Analysis, Discussions And Findings with regard to the above mentioned point:-

The WW-1 namely, Smt. Kempamma /Workman has examined herself as WW-1 and also, stated the details mentioned in the claim statement. The following Annexures have been filed along with the claim statement.

Sl. No of Annexures	Date	Documents exhibited by I Party
A	05.09.2008	Confirmation Letter issued by the II Party to the I Party mentioning her date of birth and year of joining to Service
B	13.07.1998	Termination Order issued by II Party
C	29.03.2001	Writ Petition No. 5615/2001 (S-RES) order
D	12.06.2002	Writ Appeal No. 3460/01 C/W W.A No. 3459/01(S) order
E	01.06.2006	Writ Petition No. 26101/01 C/W W.P. No. 23798/01, 23797/2001& 23794/200, order

As Per Annexure ‘B’, Termination Order has been passed by the II Party dated 13.07.1998. Further, along with evidence the workman has filed Ex W-1, the Circular relating to enhancing the superannuation age from 58 years to 60 years dated 22.08.2008. The I Party joined the Organisation on 03.11.1975 and Terminated from 10.07.1998 and the I Party would reach the superannuation age of 58 years on 10.02.2004 itself, and hence, before the Circular has been issued, the I Party would retire. So, the I Party is not entitled for reinstatement and she is only entitled for back wages and other consequential benefits from 10.07.1998 to 10.02.2004. Further, it is seen that, the II Party/Management is adopting super technical and hyper technical measures, so as to stop the I Party from getting the legal benefits. Further, the intension of the legislature in enacting the Social Welfare provisions of Industrial Dispute Act would be defeated, if the untenable action of the II Party/Management are not taken into consideration very seriously and also, the legal benefits of the workman are denied. The I Party has clearly established that the II Party had terminated the service of I Party without following the due process of law and also principles of natural justice, fairness and reasonableness and hence, the I Party is entitled to get back wages and other consequential benefits from the date of termination, i.e., 10.07.1998 to 10.02.2004. Thus, the point is answered accordingly. Hence, the following award, is passed:-

AWARD

The II Party/Management is not justified in Terminating the service of the I party/Smt. Kempamma with effect from 10.07.1998 and II Party is directed to pay full back wages and other consequential benefits from the date of termination, namely, 10.07.1998 to 10.02.2004, to the said I Party, and the present reference is answered accordingly, without cost for the above mentioned peculiar facts and circumstances.

(Dictated, transcribed, corrected and signed by me on 28th February, 2017)

V. S. RAVI, Presiding Officer

Witness examined on behalf of I Party

WW-1	Smt. Kempamma , I Party
------	-------------------------

Documents Exhibited on behalf of I Party

Exhibits	Date	Description of Document
Ex W-1	22.08.2008	Circular relating to enhancing the superannuation age from 58 years to 60 years for Mill workers.

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 944.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 81/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29012/19/2007-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 10th April, 2017

S.O. 944.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 81/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29012/19/2007-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**

DATED : 27th FEBRUARY, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

ID No. 81/2007

I Party

Sh. Siddananjegowda
S/o Late Sidda Nanja,
MML Worker, Karekere Village
Athihalli Post
Channarayapatna Taluk
Hassan District.

II Party

The Managing Director,
Mysore Minerals Limited,
No. 39, M G Road,
Bangalore.- 560001

Since, I party expired, represented by his L.R's:

- 1 Smt. Lakshamma, W/o Late Siddananje Gowda, (For II party Mr. L. Venkatarama Reddy, Advocate)
2. Sri. Puttaraju, S/o. Late Siddananje Gowda,
3. Sri. Devarju S/o. Late Siddananje Gowda,
4. Smt. Parvathamma, D/o. Late Siddananje Gowda, W/o. Sri. Narasmihe Gowda,
5. Sri. Prakash, S/o. Late Siddananje Gowda,

Applicants 1 to 3 & 5 are jointly Residing at Karekere Village,
Attihalli Post, Nuggehalli Hobli, Channarayapatna Taluk,
Hassan District

(For I party, M/s K.T. Govinde Gowda &
Sh. C.G. Dileep Gowda, Advocates)

AWARD

1. The Central Government vide Order No.L-29012/19/2007-IR(M) dated 16.05.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the management of Mysore Minerals Limited is justified in terminating the services/premature superannuating of the services of Sri Siddananjegowda w.e.f. 16.04.1998? If not, to what relief the workman is entitled to?”

2. Brief details mentioned in the Amended Claim Statement filed by LR's are as follows:-

- a) Smt. Lakshamma,
W/o Late Siddananje Gowda,
Aged about 70 years,
- b) Sri. Puttaraju,
S/o. Late Siddananje Gowda,
Aged about 38 years,
- c) Sri. Devarju
S/o. Late Siddananje Gowda,
Aged about 35 years,
- d) Smt. Parvathamma,
D/o. Late Siddananje Gowda,
W/o. Sri. Narasmihe Gowda,
Aged about 32 years,
Residing at Mudlapur Village,
Bagur Hobli, Channarayapatna Taluk,
Hassan District.
- e) Sri. Prakash,
S/o. Late Siddananje Gowda,
Aged about 30 years,

Applicants 1 to 3 & 5 are jointly
Residing at Karekere Village,
Attihalli Post, Nuggehalli Hobli,
Channarayapatna Taluk,
Hassan District

The I Party respectfully submit that on 13.10.1979, I Party-workman, joined the service of the II Party Management at its Mining Unit viz., Jamboor Chromite Mines, Channarayapatna Taluk, Hassan District, as a Mining worker. At the time of joining the service on 13.10.1979, the I Party has furnished his age as 34 years i.e., his date of birth being 13.10.1945 as per the Horoscope maintained by his parents as per the family tradition and custom. The said date of birth, in fact, has been entered in all the statutory records like EPF, B-register and Service records, etc. The I

Party is entitled to continue in the service with the II Party up to 13.10.2003 i.e., upon reaching the age of superannuation i.e, 58 years in the II Party Organization. The II Party by eye wash conducted the so called illegal Medical Examination for the purpose of removing the I Party from the service before reaching the age of superannuation. But, irrespective of the Medical Examination, the I Party is entitled to continue in service up to 13.10.2003. Further, on 16.04.1998 the II Party, Jamboor Chromite Mines Officials, orally refused to allow the I Party to do his work w.e.f 16.04.1998 on the plea that the I Party has reached his superannuation age of 58 years as per the so called illegal Medical Examination. After illegal termination the I Party has faced unemployment problem and financial hardship, not only by him but also, his family members. The entire family has depended only upon the earnings of the I Party in the II Party Organization. Some of the co-workers have challenged their pre-mature retirement and age certification before the Hon'ble High Court of Karnataka, viz., Writ Petition No. 5615/2001 between Smt. K.Dundamma Vs MML, and the same Management of II Party challenged the same in Writ Appeal No. 3460/2001 C/W W.No. 3459/2001. The said Appeal has been rejected on 12.06.2002 confirming the single Judge order dated 29.03.2001. In view of the said decision the Management reinstated the above mentioned pre-matured retired employee with payment of back wages, with continuity of service thereon and Writ Petition No. 26101/2001 C/W W.P.Nos. 23798/2001, 23797/2001 & 23794/2001 filed by Sri. V.C. Range Gowda and 8 others Vs MML, the same have been allowed on 01.06.2006. Further, it is pertinent to point out that there is no limitation for raising the dispute and the said point is repeatedly decided by the Hon'ble Supreme Court of India and Hon'ble High Courts of various states, namely,

- 1) LLJ-II-2001-pg 788-792 [SC]
Sapan Kumar Pandit Vs U.P. State Electricity Board and others.
- 2) LLJ-I-1999-pg 1260-1265 [SC]
Ajaib Singh Vs Sirhind Co-operative Marketing-cum- processing service society.
- 3) LLJ-II-1999-pg 482-483 [SC]
Mahavir Singh Vs U.P. State Electricity Board and others.
- 4) LLJ-I-2003-pg 412-414 [MP]
Ramadhar Tiwari Vs Union of India and others.
- 5) LLJ-I-1994-pg 468-471 [All]
U.P. State Spinning Mills Co. Vs State of U.P. & others.
- 6) LLJ-II-2003- pg 1143-1145 [Ori]
Management of Aska Co-operative Central Bank Ltd. Vs. State of Orissa.
- 7) LLJ-I-2002- pg 204-206 [Mad]
E.E. Construction Division 2, Mannarpuram, Trichy and Another Vs M. Gajapathy and Another.
- 8) LLJ-I-2002-pg 1079-1081 [Del]
Mangal Singh Vs Presiding Officer, Industrial Tribunal No. 1, Delhi and Another.
- 9) LLJ-I-2002-pg 1129-1132 [Bom]
Haribhau S/o. Gaman Waghchaure Vs State of Maharastra and Another.

Therefore, the I Party prayed this Court to pass an award holding that the action of the II Party Management is not justified in terminating the services of I Party, namely, premature superannuation of the I Party services w.e.f 16.04.1998 and also to direct the II Party ,to pay the Full back wages and other consequential benefits from the date of termination from 16.04.1998 to 13.10.2003, namely, till the age of superannuation as per B-register and EPF records and Service records maintained by the II Party and EPF Authorities and to pay the interest at the rate of 18% from the said due date up to the date of payment and further award of cost of the present proceedings, in the interest of justice and also, equity.

3. Brief details mentioned in the counter statement are as follows:-

The II Party states that the, allegation of the I Party in the claim statement that, on 13.10.1979, the I Party joined the services of the II Party/Management at its Mining unit as a Mining Worker and at the time of joining the service on 13.10.1979, the I Party has furnished his age as 34 years, i.e, his date of birth being 13.10.1945 as per the Horoscope maintained by his parents as per the family tradition and custom and the II Party accepted it as true and in the absence of certificate of registration of birth, is false and denied specifically. Further, the II Party states that, the allegation of the I Party that he is entitled to continue in the service with the II Party up to 13.10.2003, i.e, upon reaching the age of superannuation, i.e, 58 years in the II Party Organisation is false and denied hereby specifically. Further, it is specifically submitted that upon the intervention of the Employees Union of the II Party and on the recommendation of the Employees Union of the II Party, the I Party has been subjected to Medical Examination. The II Party after

considering the age of the I Party and also, after following the service rules, relieved the I Party from his service. All the required facilities have been provided by the II Party, to the I Party as per the Mines Act. The II Party/Management has instructed the Medical Examiners to submit report with regard to health condition and age of the mining workers. The said expert team have examined the I Party and also, they have come to the conclusion that I party is aged more than 58 years as on the date of Medical Examination. Hence, the reference is made without authority of law and without jurisdiction, and as such the dispute deserves to be dismissed on the said ground alone.

4. The pertinent point that arises for consideration in the present matter is:-

“Whether the II Party/Management is justified in terminating service/premature superannuating of the service of I Party/Sh. Siddanajegowda-workman, w.e.f 16.04.1998? If not, to what relief the I Party is entitled to?”

5. Analysis, Discussion Findings with regard to the above mentioned point:-

On behalf of II Party, Somanna, MW -1 Assistant Manager of II Party, has been examined as MW-1. MW-1 has stated that, it is true to suggest that the working conditions as per the Mining Act have not been provided at the Mines. MW-1, has also admitted that, it is also true to suggest that having suffered loss the management thought of reducing the number of workers. MW-1 has also admitted that, he does not know the names and qualifications of the Doctors and the II Party has not produced the Medical Certificate issued by the Doctor who examined the I Party's health condition. Again MW-1, has admitted that, the doctors have not conducted the Medical Examination in his presence and he does not know in what respect the I Party has been found medically unfit to continue in service and it is true to suggest that as per clause 18 and 24 any termination has to be followed by enquiry along with 3 months notice pay. Further, MW1 has specifically admitted that the documents shown to him are the true copies of Form O; Orders passed in W.P. No. 5615/2001 (SS) and W.A. No. 3460/2001 clubbed with 3459/2001 (SS); 26101/01 and others (these documents shown to the witness and admitted by him as true copies and the same are marked as Ex W-1 to Ex-4 respectively). Accordingly, as pointed out in the claim statement, the workman is entitled to get backwages, based upon the above mentioned orders of the Hon'ble Karnataka High Court. Once again, MW1 has particularly admitted that, along with termination order issued to the I Party 3 months salary has not been paid and the termination order has not been attached with copy of Medical Certificate pertaining to I Party and he does not know about the age of the I Party as assessed by the Medical Officer. Further, MW2, Office Superintendent of II party has stated that the workman has been terminated from the services on the ground that he is medically unfit. However, II party has not established the same, in accordance with law.

6. At the same time, in the claim statement as well as in evidence the I Party-workman, has specifically stated that the date of birth, as furnished by him while joining the service, has been entered in his service records and the said workman used to affix his left hand thumb impression only, as he is an illiterate person, and, it is not true to suggest that after completion of his service, whatever has to be paid to him by the company, has been fully paid. Also, the I Party has specifically stated that it is not true to suggest that as per the union's request I Party has been subjected to Medical Check up and also found to be unfit to continue in service and it is not true to suggest that I Party has not shown proper reasons for initiating any action from 1998 and it is also not true to suggest that I Party could not continue in service till 2005 as claimed by the I Party. For the above mentioned reasons, it is found that the said LR's are entitled to get monetary benefits from 16.04.1998 to 13.10.2003 and consequently the LR's are entitled to get 1/5th share each from the said amount. Further, as per Ex W-5, the LR's have filed the Death Certificate of the workman and also, as EX W-6, Genealogical tree issued by the Village Accountant. Further, it is seen that the II Party/Management is adopting super technical and hyper technical measures, so as to stop, the LR's of the deceased workman, from getting legal benefits, as the I Party-workman, in his evidence has specifically admitted that the I party-workman is an illiterate person.

7. Further, I Party belongs to socially and economically weaker section and also, he is the Rural based worker and used to work in Mines, which is in a remote place of the village and the I Party is also an illiterate worker belonging to Economically weaker section & not a matching party to claim his legal benefits as against the II Party, for the injustice done by the II Party. The Officials of the II Party Management have taken undue advantage of I Party's poverty, illiteracy, Economic weakness, social weakness and the II Party has taken the weapon, for victimizing the I Party by way of refusing employment, knowing fully well that the I Party is most incapable in approaching the Labour Department Authorities [ALC] for redressal of his grievances.. Further, the intension of the legislature in enacting the social welfare provisions of Industrial Disputes Act would be defeated, if the untenable submissions of the II Party/Management are taken into consideration. For the above, mentioned reasons, it is found that, the LR's of the deceased workman are entitled to get 1/5th share each, from the back wages and other consequential monetary benefit amounts payable to the deceased workman- Sh. Siddanajegowda from 16.04.1998 to 13.10.2003, for the above mentioned factual reasons and also, legal grounds. Accordingly, the following award is passed.

AWARD

The II Party is not justified in terminating the service/premature superannuating of the services of I party/Siddanjanegowda – workman, w.e.f 16.04.1998 and II Party is directed to pay back wages and other consequential monetary benefits to the LR's of the deceased workman, namely, the above mentioned LR's by paying 1/5th share each, from the back wages and other consequential monetary benefit amounts payable to deceased workman from 16.04.1998 to 13.10.2003, and the award is passed accordingly, without cost for the above mentioned peculiar facts and circumstances.

(Dictated, transcribed, corrected and signed by me on 27th February, 2017)

V. S. RAVI, Presiding Officer

List of Witness on the side of I Party:

WW1	Sh. Siddananje Gowda-Workman
WW2	Smt. Lakshamma

List of Witness on the side of II Party:

MW1	Sh. Somanna, Assistant Manager
MW2	Sh. Basavarajappa

Exhibit marked on behalf of I Party:

Exhibits	Date	Description of Document
Ex W-1	19.02.1998	Report of Examining Authority
Ex W-2	29.03.2001	Writ Petition No. 5615/2001 (S-RES) order
Ex W-3	12.06.2002	Writ Appeal No. 3460/01 C/W W.A No. 3450/01(S) order
Ex W-4	01.06.2006	W.P. No. 26101/01 order
Ex W-5	03.07.2013	Death Certificate of Workman
Ex W-6	-	Genealogical tree

Exhibit marked on behalf of II Party:

Exhibits	Date	Description of Document
Ex M-1	-	Register of Employees
Ex M-2	-	Workers Sheet

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 945.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 156/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29012/44/2007-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 10th April, 2017

S.O. 945.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 156/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29012/44/2007-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 14th MARCH, 2017

PRESENT : Shri V S RAVI, Presiding Officer

CR No. 156/2007

I Party

Sh. Rajappa
S/o Late Basappa, MML Worker,
Kabbooru Village, Diddakadanooru Post,
Halli Mysore Hobli, Holenarsipura Tq.
Hassan District.

Advocate For I party : M/s. K.T. Govinde Gowda
and C.G. Dileep Gowda

II Party

The Managing Director,
Mysore Minerals Limited,
No. 39, M G Road,
Bangalore.- 560001

Advocate For II party : Mr. T.K. Vedamurthy

AWARD

1. The Central Government vide Order No.L-29012/44/2007-IR(M) dated 03.12.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the termination of Sh. Rajappa by the management of Mysore Minerals Ltd. w.e.f. 08.07.1998 is justified? If not, to what relief the workman is entitled to?”

2. Brief details mentioned in the claim statement are as follows:-

The I Party respectfully submits on 27.03.1988, I Party joined the service of the II Party Management at its Mining Unit viz., Doddamudhavadi Granite Quarrey, Holenarasipura Taluk, Hassan District as a Mining worker. At the time of joining his service on 27.03.1988, the I Party has furnished his age as 40 years i.e, his date of birth being 27.03.1948, as per the Horoscope maintained by his parents as per the family tradition and custom. The II Party accepted the same as true, in the absence of Certificate of Registration of birth. The Copy of the Employees Welfare Fund Trust Membership Application Form mentioning the date of birth of the I Party and the year of joining the service is submitted as Annexure-‘A’. The said date of birth, infact, has been entered in all the statutory records like EPF, B-register and Service records, etc. Further, on 08.07.1998 the II Party, Doddamudhavadi Granite Quarrey Officials, orally refused to allow the I Party to do his work w.e.f 08.07.1998 on the plea that the I Party has reached his superannuation age of 58 years as per the so called illegal Medical Examination. The copy of the Termination Order dated 16.07.1998 is submitted as Annexure-‘B’. Immediately the I Party met the II Party Mines Officials, number of times and explained to them about his correct age and requested them to permit him to work till he attains the age of superannuation i.e, 58 years. After illegal termination, the I Party has faced unemployment problem and financial hardship, and also his family members. The entire family has depended only upon the earnings of the I Party in the II Party Organization. The II Party Management similarly, has prematurely retired the co-workers of the I Party on the ground of Medically un-fitness and also, as per the age certified by the Medical Officer. Some of the co-workers have challenged their pre-mature retirement and age certification before the Hon’ble High Court of Karnataka, viz.,

- 1) Writ Petition No. 5615/2001 between Smt. K.Dundamma Vs MML, and the same Management of II Party challenged the same in Writ Appeal No. 3460/2001 C/W W.No. 3459/2001. The said Appeal has been rejected on 12.06.2002 confirming the single Judge order dated 29.03.2001. In view of the said decision the Management reinstated the above mentioned pre-matured retired employee with payment of back wages, with continuity of service thereon.

- 2) Writ Petition No. 26101/2001 C/W W.P.Nos. 23798/2001, 23797/2001 & 23794/2001 filed by Sri. V.C. Range Gowda and 8 Vs MML, have been allowed on 01.06.2006. On account of the illegal payment and other lapses, in the II Party Management, it has to face the administrative problems. The II Party adopted its own tactics, ways and means for terminating the Mining Workers in short cut methods in an illegal and irregular manner, by adopting anti-labour and un-fair labour practice and victimized the I Party and other co-workers by removing them en-masse by resorting to so-called Medical Examination. The II Party and also the so-called Medical Examiner have colluded with each other and utterly failed to determine the age of I Party in a scientific manner. The action of the II Party is neither fair nor done in a proper manner but conducted as an eye wash and also, as an empty formality with a predetermined mind and also, with an evil intention to stop the I Party from services. The II Party having not followed the Mandatory provisions of Section 25 F, G, H & N of the Industrial Disputes Act, 1947 and Rules 78 and 79 thereon, the action of the Management is, therefore, void-ab-initio as laid by the Hon'ble Supreme Court of India in the case of Sundaramani Vs State Bank of India, Santhosh Gupta Vs State Bank of India, Robert D'Souza Vs Southern Railway, K.S.R.T.C.- Bangalore Vs Boraiaha and others and also violated the Provisions of Industrial Dispute Act, 1947. The II Party Management is not justified in retrenching the service of the I Party w.e.f. 08.07.1998, in summary manner, without any regard to the principal of Natural justice and fair play. The I Party belongs to socially and economically weaker section and also, he is the Rural based worker and used to work in Mines, which is in a remote place of the village and the I Party is also an illiterate worker belonging to Economically weaker section & not a matching party to fight against the II Party, for the injustice done by the II Party. Under the I.D. Act there is no Limitation prescribed for raising the dispute, the Article 137 of schedule to the Limitation Act is not applicable to proceedings under I.D. Act. This point is repeatedly decided by the Hon'ble Supreme court of India and Hon'ble High Courts of various states, viz.,

- 1) LLJ-II-2001-pg 788-792 [SC]
Sapan Kumar Pandit Vs U.P. State Electricity Board and others.
- 2) LLJ-I-1999-pg 1260-1265 [SC]
Ajaib Singh Vs Sirhind Co-operative Marketing-cum- processing service society.
- 3) LLJ-II-1999-pg 482-483 [SC]
Mahavir Singh Vs U.P. State Electricity Board and others.
- 4) LLJ-I-2003-pg 412-414 [MP]
Ramadhar Tiwari Vs Union of India and others.
- 5) LLJ-I-1994-pg 468-471 [All]
U.P. State Spinning Mills Co. Vs State of U.P. & others.
- 6) LLJ-II-2003- pg 1143-1145 [Ori]
Management of Aska Co-operative Central Bank Ltd. VS State of Orissa.
- 7) LLJ-I-2002- pg 204-206 [Mad]
E.E. Construction Division 2, Mannarpuram, Trichy and Another Vs M. Gajapathy and Another.
- 8) LLJ-I-2002-pg 1079-1081 [Del]
Mangal Singh Vs Presiding Officer, Industrial Tribunal No. 1, Delhi and Another.
- 9) LLJ-I-2002-pg 1129-1132 [Bom]
Haribhau S/o. Gaman Waghchaure Vs State of Maharastra and Another.

Therefore, it is prayed to pass an Award by holding that the action of the II Party Management is not justified in Terminating the services/premature superannuating of the I Party services w.e.f 08.07.1998 and direct the II Party to reinstate the I Party, with continuity of service, with payment of full back wages and other consequential benefits from the date of termination i.e, 08.07.1998 till providing employment and further, Award of cost of this proceedings in the interest of justice and equity.

3. The II party has not filed the objection for the said claim statement of I party, though sufficient and adequate opportunities have been granted to the II Party. Further Vakalat has been filed on behalf of II Party on 25.01.2008 itself. However, the objection to the claim statement has not been filed by II Party, without any valid reasons. Further, this is an old case of the year 2007. In the circumstances, this Court is constrained to pass appropriate award, in accordance with law, based upon the materials brought on record.

4. The crucial point that arises for consideration in the present matter is, as follows:-

‘Whether the action of the II Party, namely, M M L in Terminating the services of I Party/Sh. Rajappa w.e.f 08.07.1998, is justified? If not, to what relief, the I Party is entitled to get?’

5. Analysis, Discussions And Findings with regard to the above mentioned point:-

The WW-1 namely, Sh. Rajappa/Workman has examined himself as WW-1 and also, the above mentioned submissions made in the claim statement have been stated by him. As Per EX W-1, in the Employees Fund Trust membership Application form, the Date of Birth of the said workman has been clearly mentioned as 27.03.1948. Further, Ex-W2, the Termination Order has been passed by the II Party dated 16.07.1998. Also, the I Party joined the Organisation on 27.03.1988 and Terminated from 08.07.1998 as per Ex-W1 and W2. In the above mentioned facts and circumstances, the I Party is entitled to get back wages from 08.07.1998 to till the superannuation date of 27.03.2006, namely, on reaching the age of superannuation. Further, it is seen that, the II Party/Management is adopting super technical and hyper technical measures, so as to stop the workman from getting the legal benefits. Further, the intension of the legislature in enacting the Social Welfare provisions of Industrial Dispute Act would be defeated, if the untenable actions of the II Party/Management are not taken into consideration, very seriously, and also the legal benefits of the workman are denied. The I Party has clearly established that the II Party has terminated the service of I Party without following the due process of law and also principles of natural justice, fairness and reasonableness and hence, the I Party is entitled to get full back wages and other consequential benefits from the date of termination, i.e., 08.07.1998 to 27.03.2006 for the above mentioned various details mentioned in the claim statement and also, established by the I party. Thus, the point is answered, accordingly. Hence, the following award, is passed:-

AWARD

The II Party/Management is not justified in Terminating the services of I party/Rajappa with effect from 08.07.1998 and II Party is directed to pay the full back wages and other consequential benefits from the date of termination, i.e., 08.07.1998 to 27.03.2006 to the I party-workman, and the present reference is answered, accordingly, without cost for the above mentioned peculiar facts and circumstances.

(Dictated, transcribed, corrected and signed by me on 14th March, 2017)

V. S. RAVI, Presiding Officer

Witness examined on behalf of I Party

WW-1	Sh. Rajappa, I Party
------	----------------------

Documents Exhibited on behalf of I Party

Exhibits	Date	Description of Document
Ex W-1	22.12.1990	Employees Welfare Fund Trust Membership Application Form.
Ex W -2	16.07.1998	Termination Order issued by II Party
Ex W-3	29.03.2001	Writ Petition No. 5615/2001 (S-RES) order
Ex W-4	12.06.2002	Writ Appeal No. 3460/01 C/W W.A No. 3459/01(S) order
Ex W-5	01.06.2006	Writ Petition No. 26101/01 C/W W.P. No. 23798/01, 23797/2001& 23794/2001

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 946.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 157/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29012/45/2007-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 10th April, 2017

S.O. 946.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 157/2007) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29012/45/2007-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 23rd FEBRUARY, 2017**PRESENT : Shri V S RAVI, Presiding Officer****CR No. 157/2007****I Party**

Sh. Chikkegowda
S/o Devegowda, MML Worker,
Bagewal Village & Post Bandasi Hobli,
Arasikere Taluk
Hassan District.

Advocate For I party : M/s. K.T. Govinde Gowda
and C.G. Dileep

II Party

The Managing Director,
Mysore Minerals Limited,
No. 39, M G Road,
Bangalore.- 560001

Advocate For II party : Mr. T.K. Vedomurthy

AWARD

1. The Central Government vide Order No.L-29012/45/2007-IR(M) dated 03.12.2007 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the punishment of dismissal imposed on Sh. Chikkegowda by the management of Mysore Minerals Ltd. w.e.f. 02.02.1998 is justified? If not, to what relief the workman is entitled to?”

2. Brief details mentioned in the claim statement are as follows:-

The I Party respectfully submits that in the year 1984, I Party joined the service of the II Party Management at its Mining Unit viz., Haladahalli Chromite Mines and Later on, transferred to Byrapura Chromite Mines, Channarayana Taluk, Hassan District as a Mining worker under Token No. 1445. During the year 1998, due to Industrial hazardness and excess of heat he suffered, illness and due to fever, which turned into jaundice and in view of the same, the I Party has availed sick leave from 02.02.1998 up to 03.05.1998. The I Party has promptly intimated about the same to the II Party Mines Manager. The II Party, as an eye wash conducted preliminary enquiry, for about half an hour, on 22.06.1998, in order to find out the reasons for absence of I Party for the duty. Not satisfied with the same, the II Party, without issuing any show cause notice, charge sheet to the I Party and calling for explanation and conducting fair and proper enquiry, and without following the due process of law and also without following the procedure, the II Party issued a termination Order No. CVSO/65/DP/98-99/2256 dated 14.08.1998 through its Mining Manager i.e Byrapura Chromite Mines, who, in turn under his covering letter dated 27.08.1998 served the same to the I Party during the 1st week of September, 1998 stating that service of I party-workman has been terminated with retrospective effect from 02.02.1998 i.e, from the very next day of availing the Leave. The termination letter is not served on the same day and also it is not supported with any prior notice of 3 months or three months notice pay. Hence, the Order of termination under Annexure-‘A’ is itself is illegal, irregular and not sustainable in Law. All the efforts made by I Party to permit him to work in the above mines, went in vain because of adamant, un-reasonable, unhelpful attitude and hostile discrimination of the II Party Management. There is no 3 months notice or 3 months pay in lieu of notice. Therefore the so-called alleged Enquiry is bristles with very many infirmities and illegalities. The punishing authority has failed to furnish the findings of the enquiry along with the Second Show Cause as to why the findings of the Enquiry Officer should not be accepted by the Punishing Authority and the failure to do so amounts to, denial of reasonable and adequate opportunity to the I Party to defend his case. The said view is also up-held by the Hon’ble Court in a decision reported in 1982 KLJ page No. 265 between Mr. M. Shamanna Vs State Bank of Mysore. The I Party submits that, he is the only bread winner of his family and hence, he immediately approached the II Party Mines Manager for re-calling the above mentioned illegal order and permit him to work in the above mines. The I

Party submits that the II Party Management is not justified in terminating the I Party services, with retrospective effect from 01.06.1999 but in the conciliation the II Party stated that the termination of the I Party has been given effect from 02.08.2001 in summary manner without any regards to the principle of Natural justice and fair play. The I Party states that, apart from the violation of various provisions of the ID Act, and principles of natural justice, the II Party violated its own certified standing orders namely Mysore Minerals Limited Officers and Employees Conditions of Service, conduct and Disciplinary proceedings rules. The I Party states that the so-called preliminary enquiry conducted in the absence of the I Party cannot be treated as a regular enquiry. The I Party belongs to socially and economically weaker section and also, he is the Rural based worker and used to work in Mines, which is in a remote place of the village and the I Party is also an illiterate worker belonging to Economically weaker section & not a matching party to fight against the II Party for the injustice done by the II Party. The I Party is facing financial hardship and mental agony due to stoppage of his monthly earnings in the II Party organization and also, due to illegal termination. Also, the I Party is not able to maintain himself and his family with day to day, food and basic needs. The I Party has faced the financial hardship to reach the Labour Department like Assistant Labour Commissioner and Conciliation Officer (C), Hubli from his place, for raising the dispute and also, to set right his grievances. Ultimately with great hardship, mental agony and with the help of well wishers, the I Party has raised the I.D before the Assistant Labour Commissioner and Conciliation Officer (C), Hubli on 25.03.2006. The I Party is entitled for back wages, continuity of service and other consequential benefits from the date of refusal of employment w.e.f. 02.02.1998. The II Party violated the provisions of I.D. Act as well as its own Certified Standing Orders/Service Rules as stated above. Under the I.D. Act there is no limitation prescribed for raising the dispute and the Article 137 of Schedule to the limitation Act is not applicable to proceedings under I.D. Act. Under the I.D. Act there is no limitation for raising the dispute, and the Article 137 of Schedule to the Limitation Act is not applicable to proceedings under I.D. Act. This point is repeatedly decided by the Hon'ble Supreme Court of India and Hon'ble High Courts of various states namely,

- (i) LLJ-II-2001-pg788-792 [SC], Sapan kumar Pandit Vs U.P. State Electricity Board and others.
- (ii) LLJ-I-1999-pg 1260-1265 [SC], Ajaib Singh Vs Sirhind Co-operative Marketing-cum-processing Service Society.
- (iii) LLJ-II-1999-pg-482-483[SC], Mahavir Singh Vs U.P. State Electricity Board and others.
- (iv) LLJ-I-2003-pg 412-414 [MP], Ramadhar Tiwari Vs Union of India and others.
- (v) LLJ-I-1994-pg 468-471 [All], U.P. State Spinning Mills Co. Vs State of U.P & Others
- (vi) LLJ-II-2003-pg 1143-1145[Ori], Management of Aska Co-operative Central Bank Ltd. Vs State of Orissa
- (vii) LLJ-I-2002-pg-204-206 [Mad], E.E. Construction Division 2, Mannarpuram, Trichy and Another Vs M.Gajapathy and Another
- (viii) LLJ-I-2002-pg-1079-1081[Del], Mangal Singh Vs Presiding Officer, Industrial Tribunal No.1, Delhi and Another
- (ix) LLJ-I-2002-pg-1129-1132[Bom], Haribhau S/o. Gaman Waghchaure Vs State of Maharastra and Another.

Therefore, the I Party prays this Court to pass an award holding that the action of the II Party Management is not justified in terminating the services of I Party with retrospective effect from 02.02.1998 and to direct the II Party to reinstate the I Party, with continuity of service, with payment of Full back wages and other consequential benefits from the date of termination i.e, 02.02.1998 till providing employment as per B-register and EPF records and Service records maintained by the II Party and EPF Authorities and pay the interest at the rate of 18% from the said due date up to the date of payment and further, award for the cost of the present proceedings, in the interest of justice and also, equity.

3. Brief details mentioned in the Amended counter statement are as follows:-

The II Party states that, the I Party workman has not regularly, attended, the duty entrusted by the II Party. The I Party workman has been continuously absent from the duty without even seeking leave or permission of the II Party. No material evidence is placed on record to show that he has undergone the treatment. As the I Party workman failed to give satisfactory explanation, II Party issued Termination Order No. CVSO/65/DP/98-99/2256 dated 14.08.1998. It is further submitted that, upon issuing Order of Termination to the I Party, all terminal benefits have been settled, and the same has been acknowledged by the I Party workman.

4. Further, on 8.5.2012, the II party has submitted that there has been no Domestic Enquiry and that the affidavit filed may be treated as affidavit on merits and the issue regarding Domestic Enquiry may be Deleted and he has also filed a memo to that effect. Further, on 5.11.2014, memo filed by the II party, to the effect that the earlier affidavit has

been filed by one Mr. Somanna, Asst. Manager and he is retired from service and so, the II party requested to eschew his evidence and requested to permit the II party to examine fresh witness.

5. The crucial point that arises for consideration in the present matter is:-

“Whether the punishment of dismissal imposed on the I Party/ Sh. Chikkegowda by the II Party/Management of Mysore Minerals Limited w.e.f. 02.02.1998 is justified? If not, to what relief the I Party is entitled to get?”

6. Analysis, Discussion Findings with regard to the above mentioned point:-

The I Party/workman has specifically stated in the claim statement and also in his evidence that he has joined in the service of II Party/Management at its mines namely Haladahalli Chromite Mines and later on, transferred to Byrapura Chromite Mines, Channarayana Taluk, Hassan District as a Mining worker under Token No. 1445 and due to industrial hazard and excess of heat he suffered the illness due to fever, which turned into jaundice and in view of the same, the I Party has availed the sick leave from 02.02.1998 up to 03.05.1998 and the I Party has promptly intimated about the same to the II Party Mines Manager. Further, I Party has categorically stated in the claim statement and also in his evidence that the II Party without issuing any Show-cause notice, charge sheet to the I Party and calling for explanation and also, without conducting the fair and proper enquiry and without following the due process of law, the II Party issued Termination Order as per Ex W-1. Further, the I Party has pointed out in his claim statement and evidence, as per the Termination Order dated 14.08.1998, the II Party has terminated the service of I Party with retrospective effect from 02.02.1998 and the said Termination Order is not supported with any prior notice of 3 months or 3 months notice pay. In the circumstances, the I party has specifically pointed out that, the Order of termination as per Ex W-1 itself, is illegal, irregular and not sustainable in Law. Furthermore, in the affidavit and the evidence the I Party/workman has stated that all the efforts made by him, for recalling above mentioned termination order has not materialised, due to the unreasonable attitude of the II party. Further, I party has particularly stated in his evidence that he is an illiterate and he is the only bread winner of his family and his repeated request has not been considered by the II Party, due to the adamant, un-reasonable, un-helpful attitude and hostile discrimination of the II Party Management. Further, as per Ex W-3, on 31.08.2001 itself the I Party/workman has sent letter to Chairman-cum-Managing Directors and also to Mines Manager of II Party by informing them that during the year 1998 due to industrial health hazardousness, he has suffered illness and later, turned into the disease of Jaundice and he has availed the leave for 3 months from 02.02.1998 to 03.05.1998 and he has intimated promptly to the Mines Manager and after coming to know about the mistake the officials of the II Party assured the I Party for cancelling the above Termination Order and also to permit the I Party/workman and everyday the I Party has reported for work, but II Party officials have informed the I Party that they need the clearance from the Head Office. Further, as per Ex W-4, circular issued on 22.08.2008 by the II Party the retirement age of workman has been increased from 58 to 60 years.

7. Further, MW-1 namely Jayaram, Working as Assistant Office superintendent of in the II Party has clearly admitted that II Party being the Government Organisation cannot terminate the I Party by giving oral order because each and every action taken by the II Party will be in writing and as such the question of refusing to issue Termination Order to the I Party in writing does not arise, at all. However, it is relevant to mention that the II Party has not followed the principles of natural justice, fairness and reasonableness and also issued Show-Cause notice to the I Party for the alleged absence of duty and also the II Party has failed to conduct the proper enquiry and thereafter also, the II Party has failed to issue the Termination Order as per Ex W-1 to I Party, in accordance with law. In such circumstances only the I Party has correctly pointed out in his evidence and also in claim statement and also in his representation submitted to II Party dated 31.08.2001, that the II Party, without issuing any show-cause notice, charge sheet to the I Party calling for explanation also without conducting the fair and proper enquiry and also, without following the due process of law, issued Termination Order on 14.08.1998, terminating the service of I Party with retrospective effect from 02.02.1998 and hence, the said impugned Order is illegal and not proper.

8. Further, the I Party has clearly stated that he has met the officers of the II Party several times and also sent representation on 31.08.2001 as per Ex W-3, requesting for cancellation of Termination Order issued by the II Party illegally, but the II Party has failed to consider the request of I Party and therefore the punishment of dismissal imposed by the II Party is illegal, irregular, arbitrary, mala fide and also not justified in accordance with law. Further, in the evidence the I Party has clearly stated that he has not gainfully employed anywhere during the termination period and he is depending upon the earnings from the employment with the II Party and due to his illegal termination he has suffered mental agony and hardship. Further, MW-1 has stated that the process of Termination of service of I Party has been done by the II Party as per the due process of law after conducting the proper enquiry. However, the same has not been established in the appropriate way by the II party by submitting the relevant records. Further, the delay aspect has been sufficiently and also adequately explained by the workman in the above mentioned factual manner, and also legal manner, based upon the above mentioned various citations. Further, it is settled law that there is no estoppel as against the statutory rights as pointed out in the Social Welfare legislation of Industrial Dispute Act. Hence, the

Management cannot submit that after receiving the terminal benefits, the workman cannot adjudicate for his legal rights under the provisions of I.D. Act.

9. Further, on a careful scrutiny of the pleadings namely claim statement and objection filed by the II Party and also evidence and documents filed on behalf of both parties and Exhibits filed on behalf of I Party, it is found that the II Party has not taken action as per the principles of natural justice. Further on appreciating the evidences adduced and also the documents produced by both the parties, in the proper perspective, it is found that the workman is entitled to get reinstatement, with full back wages, and also with the continuity of service. Further, it is seen that, the II Party/Management is adopting super technical and hyper technical measures, so as to stop the workman from getting the legal benefits. Further, the intension of the Legislature in enacting the Social Welfare provisions of Industrial Dispute Act would be defeated, if the untenable submissions of the II Party/Management are taken into consideration and the legal benefits of the workman are denied. The I Party has clearly established that the II Party has terminated the service of I Party without following the due process of law and also principles of natural justice, fairness and reasonableness and hence, the I Party is entitled to get reinstatement with full back wages and also, the continuity of service. Thus, the point is answered in favour of I Party. Hence, the following award, is passed:-

A W A R D

The II Party/Management is not justified in imposing the punishment of dismissal of I party/Chikkegowda with retrospective effect 02.02.1998 and II Party is directed to reinstate the I Party with continuity of service, and with payment of full back wages and other consequential benefits from the date of termination, namely, 02.02.1998 till providing employment and the present reference is answered in favour of I party, without cost for the above mentioned peculiar facts and circumstances.

(Dictated, transcribed, corrected and signed by me on 23 February, 2017)

V. S. RAVI, Presiding Officer

List of Witness on the side of I Party:

WW1	Sh. Chikkegowda, I Party
-----	--------------------------

List of Witness on the side of II Party:

MW1	Sh. Jayaram, Assistant Office Superintendent
-----	--

Exhibit marked on behalf of I Party:

Exhibits	Date	Description of Document
Ex W-1	14.08.1998	Letter relating to unauthorised absence from duty of I Party and also dismissal order
Ex W-2	27.08.1998	Office Order
Ex W-3	31.08.2001	Letter to II Party Management by I Party
Ex W-4	22.08.2008	Circular relating to enhancing the superannuation age from 58 years to 60 years.

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 947.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स मैसूर मिनरल्स लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या 61/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-29012/68/2008-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 10th April, 2017

S.O. 947.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 61/2008) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Mysore Minerals Limited and their workman, which was received by the Central Government on 03.04.2017.

[No. L-29012/68/2008-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
BANGALORE**DATED : 17th FEBRUARY, 2017**PRESENT : Shri V S RAVI**, Presiding Officer**CR No. 61/2008****I Party**

Sh. Rangamma
S/o Late Sh. Puttaswamy Gowda,
MML Worker, Darasihalli Village
M. Shivara Post
Bagur Hobli,
Channarayapatna Taluk
Hassan District.

Since, I party Workman Puttasamy Gowda,
Expired represented by his L.R's:

1. Smt. Rangamma, W/o Late Sh. Puttaswamy Gowda.
2. Smt. D.P.Bharathi, D/o Late Sh. Puttaswamy Gowda,
3. Sri D.P.Bairegowda, S/o Late Sh. Puttaswamy Gowda,

All residing at Darasihalli Village, M. Shivara Post,
Bagur Hobli, Channarayapatna Taluk, Hassan District.

(For I party, M/s. K.T. Govinde Gowda &
Sh. C.G. Dileep Gowda, Advocates)

II Party

The Managing Director,
Mysore Minerals Limited,
No. 39, M G Road,
Bangalore.- 560001

(For II party M/s. A.K. Vasanth &
M.K. Girish Advocates)

AWARD

1. The Central Government vide Order No.L-29012/68/2008-IR(M) dated 04.08.2008 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the removal from service of Late Puttaswamy Gowda by the management of M/s Mysore Minerals Limited w.e.f. 29.05.1998 is justified? If not, to what relief the workman is entitled?”

2. Brief details mentioned in the Claim Statement filed by LR's are as follows:-

- a) Smt. Rangamma,
W/o. Late Puttaswamy Gowda,
Aged about 70 years
- b) Smt. D.P.Bharathi,
D/o. Late Puttaswamy Gowda,
Aged about 38 years
- c) Sri. D.P.Bairegowda
S/o. Late Puttaswamy Gowda,
Aged about 41 years

are the Legal Representatives of the deceased workman, Sh. Puttaswamy Gowda. The I Party submits that the II Party has illegally terminated the services of the workman Puttaswamy Gowda, (since deceased) w.e.f. 29.05.1998,

and the workman has faced unemployment, financial hardship, mental agony, which caused to his death on 13.03.2004. Hence, the I Party being wife of Late. Sh. Puttaswamy Gowda. raised the dispute before the learned Assistant Labour Commissioner [C], Hubli claiming back wages and other consequential benefits from the date of his illegal termination w.e.f. 29.05.1998 to till his death on 13.03.2004. The copy of the claim statement filed before the learned Assistant Labour Commissioner and certified copy of the Death Certificate of Sh. Puttaswamy Gowda are submitted as Annexures 'B' & 'C'. The workman- Sh. Puttaswamy Gowda on 06.01.1977, joined the services of the II Party Management at its Mining Unit viz., Byrapura Chromite Mines and later transferred to Thagadur Chromite Mines, Channarayapatna Taluk, Hassan District, as a Watchman in the Mines. At the time of joining his service, he furnished his age as 31 years i.e, his date of birth being 01.09.1946, as per the Horoscope maintained by his parents as per the family tradition and custom. The II Party accepted the same as true, in the absence of Certificate of Registration of birth. The said date of birth, infact, has been entered in all the statutory records like EPF, B-register and Service records, etc. Further, the II Party as an eye wash conducted the so called illegal Medical Examination for the purpose of removing the workman of the I Party from his service before reaching the age of superannuation. Further, on 29.05.1998 the II Party, Thagadur Chromite Mines Officials, orally refused to allow the workman of I Party to work w.e.f 29.05.1998 on the plea that he has reached his superannuation age of 58 years as per the so called illegal Medical Examination. Immediately the workman of the I Party met the II Party Mines Officials number of times and explained to them about his correct age and requested them to permit him to work till he attains the age of superannuation i.e, 58 years. After illegal termination the husband of I Party has faced unemployment problem and financial hardship, and also his family members. The entire family has depended only upon the earnings of the husband of I Party in the II Party Organization. Some of the co-workers have challenged their pre-mature retirement and age certification before the Hon'ble High Court of Karnataka, viz.,

- 1) Writ Petition No. 5615/2001 between Smt. K.Dundamma Vs MML, and the same Management of II Party challenged the same in Writ Appeal No. 3460/2001 C/W W.No. 3459/2001. The said Appeal has been rejected on 12.06.2002 confirming the single Judge order dated 29.03.2001. In view of the said decision the Management reinstated the above mentioned pre-matured retired employee with payment of back wages, with continuity of service thereon.
- 2) Writ Petition No. 26101/2001 C/W W.P.Nos. 23798/2001, 23797/2001 & 23794/2001 filed by Sri. V.C. Range Gowda and 8 others Vs MML, have been allowed on 01.06.2006.

On account of the illegal payment and other lapses, in the II Party Management, it has to face the administrative problems. Further, the II Party used the illegal, imaginary, hypothetical and unscientific Medical report as its tool for unilaterally deciding the age of workman of I Party and other workers. The II Party is not justified in law in refusing the employment, w.e.f, 29.05.1998 to the said workman, without any basis and also, in an arbitrary and unscientific manner. The II Party having not followed the Mandatory provisions of Section 25 F, G, H & N of the Industrial Disputes Act, 1947 and Rules 78 and 79 thereon, the action of the Management is, therefore, void-ab-initio as laid by the Hon'ble Supreme Court of India in the case of Sundaramani Vs State Bank of India, Santhosh Gupta Vs State Bank of India, Robert D'Souza Vs Southern Railway, K.S.R.T.C.- Bangalore Vs Boraiaha and others and also violated the Provisions of Industrial Dispute Act, 1947. The II Party Management is not justified in retrenching the service of the workman of the I Party w.e.f. 29.05.1998, in summary manner, without any regards to the principal of Natural justice and fair play. The workman of the I Party belongs to socially and economically weaker section and also, he is the Rural based worker and used to work in Mines, which is in a remote place of the village and he is also an illiterate worker belonging to Economically weaker section & not a matching party to fight against the II Party, for the injustice done by the II Party. The Officials of the II Party Management have taken undue advantage of poverty, illiteracy, Economic weakness, social weakness of the workman of the I party and the II Party has taken the weapon of victimizing the workman of I Party by way of refusing employment, knowing fully well that the workman of I Party is most incapable in approaching the Labour Department Authorities [ALC] for redressal of his grievances. Under the Industrial Dispute Act, there is no limitation prescribed for raising the dispute, and the Article 137 of schedule to the limitation act is not applicable to proceedings under I.D. Act. The said point is repeatedly decided by the Hon'ble Supreme Court of India and Hon'ble High Courts of various states viz.,

- (i) LLJ-II-2001-pg788-792 [SC], Sapan kumar Pandit Vs U.P. State Electricity Board and others.
- (ii) LLJ-I-1999-pg 1260-1265 [SC], Ajaib Singh Vs Sirhind Co-operative Marketing-cum-processing Service Society.
- (iii) LLJ-II-1999-pg-482-483[SC], Mahavir Singh Vs U.P. State Electricity Board and others.
- (iv) LLJ-I-2003-pg 412-414 [MP], Ramadhar Tiwari Vs Union of India and others.
- (v) LLJ-I-1994-pg 468-471 [All], U.P. State Spinning Mills Co. Vs State of U.P & Others

- (vi) LLJ-II-2003-pg 1143-1145[Ori], Management of Aska Co-operative Central Bank Ltd. Vs State of Orissa
- (vii) LLJ-I-2002-pg-204-206 [Mad], E.E. Construction Division 2, Mannarpuram, Trichy and Another Vs M.Gajapathy and Another
- (viii) LLJ-I-2002-pg-1079-1081[Del], Mangal Singh Vs Presiding Officer, Industrial Tribunal No.1, Delhi and Another
- (ix) LLJ-I-2002-pg-1129-1132[Bom], Haribhau S/o. Gaman Waghchaure Vs State of Maharastra and Another.

Therefore, it is prayed that this Court may be pleased to pass an Award by holding that the action of the II Party Management is not justified in Terminating the services/premature superannuating of the workman of I Party Sh. Puttaswamy Gowda w.e.f 29.05.1998 and also to, direct the II Party to pay the full back wages and other consequential benefits from the date of termination i.e, 29.05.1998 to 13.03.2004 and further Award of cost of this proceedings in the interest of justice and equity.

3. The II party has not filed the objection for the said claim statement of I party, though sufficient and adequate opportunities have been granted to the II Party. Further Vakalat has been filed on behalf of II Party on 10.03.2010 itself. However, the objection to the claim statement has not been filed by II Party, without any valid reasons. Further, this is an old case of the year 2008. In the circumstances, this Court is constrained to pass appropriate award, in accordance with law, based upon the materials brought on record.

4. The pertinent point that arises for consideration in the present matter is:-

“Whether the II Party is justified in terminating service/premature superannuation service of workman of I Party Sh. Puttaswamy Gowda, w.e.f 29.05.1998? If not, to what relief the husband of I Party is entitled to get?”

5. Analysis, Discussion Findings with regard to the above mentioned point:-

The WW-1 namely, Smt. Rangamma, W/o Late. Sh. Puttaswamy Gowda/Workman has examined herself as WW-1 and also, the above mentioned submissions made in the claim statement have been stated by her. As Per EX W-1, dated: 28.10.2010, requisition letter has been submitted for the Correction of Name in the Reference No. 29012/68/2008-IR[M], dated 04.08.2008, by issuing the necessary corrigendum. As per Ex W-3, Death Certificate of Sh. Puttaswamy Gowda dated: 31.07.2010, has been submitted. Further, as per Ex W-4, Termination Order has been passed by the II Party dated 06.06.1998. The WW1, has clearly submitted in the claim statement and also, in her evidence that the husband of I Party joined the Organisation on 06.01.1977 and Terminated from 29.05.1998. Further, as per Ex W-8, the Genealogical tree has been issued by the Village Accountant. In the above mentioned facts and circumstances, the workman of I Party is entitled to get back wages from 29.05.1998 to till the date of his death 13.03.2004. Further, it is seen that, the II Party/Management is adopting super technical and hyper technical measures, so as to stop the workman of I Party from getting the legal benefits. Further, the intension of the legislature in enacting the Social Welfare provisions of Industrial Dispute Act would be defeated, if the untenable actions of the II Party/Management are not taken into consideration very seriously, and also the legal benefits of the workman are denied. The I Party has clearly established that the II Party has terminated the service of I Party without following the due process of law and also principles of natural justice, fairness and reasonableness and hence, the workman of I Party is entitled to get full back wages and other consequential benefits from the date of termination, i.e., 29.05.1998 to 13.03.2004. For the above, mentioned reasons, it is found that, the LR's of the deceased workman are entitled to get 1/3th share each, from the back wages and other consequential monetary benefit amounts, payable to the I Party workman- Sh. Puttaswamy Gowda from 29.05.1998 to 13.03.2004, for the above mentioned various reasons, grounds and details mentioned in the claim statement and also, established by the I party, in accordance with the law. Accordingly, the following award is passed.

AWARD

The II Party is not justified in terminating the service of the Late Puttaswamy Gowda – (workman) w.e.f 29.05.1998 and II Party is directed to pay back wages and other consequential monetary benefits to the LR's of the deceased workman, namely, the above mentioned LR's by paying 1/3th share each, from the back wages and other consequential monetary benefit amounts payable to deceased workman from 29.05.1998 to 13.03.2004, and the award is passed accordingly, without cost for the above mentioned peculiar facts and circumstances.

(Dictated, transcribed, corrected and signed by me on 17th March, 2017)

V. S. RAVI, Presiding Officer

List of Witness on the side of I Party:

WW 1	Smt. Rangamma, Wife of workman
------	--------------------------------

Exhibit marked on behalf of I Party:

Exhibits	Date	Description of Document
Ex W-1	28.10.2010	Requisition Letter
Ex W-2	30.06.2007	Claim Statement filed before Asst.Labour Commissioner
Ex W-3	31.07.2010	Death Certificate of workman
Ex W-4	06.06.1998	Termination Order issued by II Party
Ex W-5	29.03.2001	Writ Petition No. 5615/2001 (S-RES) order
Ex W-6	12.06.2002	Writ Appeal No. 3460/01 C/W W.A No. 3459/01(S) order
Ex W-7	01.06.2006	Writ Petition No. 26101/01 C/W W.P. No. 23798/01, 23797/2001& 23794/2001, order
Ex W-8	31.07.2010	Genealogical tree.

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 948.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स जी. के. एसोसिएट एवं तीन अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचात (संदर्भ संख्या 11/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-30011/29/2010-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 10th April, 2017

S.O. 948.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2011) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. G.K. Associates and three others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-30011/29/2010-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE**

DATED : 13th MARCH, 2017

PRESENT : Shri V S RAVI, Presiding Officer

ID No. 11/2011

I Party

The President,
Karnataka Petroleum & Gas
Workers Union,
CITU Office, Udayanagar,
Doorvaninagar,
Bangalore-560016.

II Party

1. M/s. G.K. Associates, No.202 & 203, 6th Cross, RHB Colony, Mahadevapura Pt, B'loce-48.
2. M/s. V.K. Associates, No.202 & 203, 6th Cross, RHB Colony, Mahadevapura Pt, B'loce-48.
3. M/s Devangere Security Services, No.361/2, 2nd Flr, 4th mn, 9th Cr. Behind Vishweshwaraiah Park, P.J Extn, Davangere-577002.
4. The Plant Manager, Indian Oil Corporation Ltd., Indane Bldg Plant, Devanagudi, B,lore-67

AWAR D

1. The Central Government vide Order No.L-30011/29/2010-IR(M) dated 18.04.2011 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the management of M/s G.K Associates. M/s V.K Associates & M/s Davangere Security Services are justified in declining weekly day of rest in respect of such of these workmen employed by him who are members of KPGWU, when they failed to work less than six days in a week”, and “Whether the KPGWU are justified in demanding weekly day of rest in spite of memorandum of settlement signed on under Sec.12(3) of the Industrial Dispute Act, 1947? What relief they are entitled?”

AWAR D

The Counsel for II Party No.1 filed memo dated 13.03.2017. The details of the memo dated 13.03.2017 filed by the II Party No.1 are as follows:-

1. “It is submitted that the above dispute is referred to this Hon’ble Court at the instance of the I Party Union. The points of dispute referred for adjudication is with regard to the alleged denial of weekly day off rest during the working. After the reference is made, this II Party has filed a detailed counter statement and then an application was also filed seeking for impleading the Principal employer. This Hon’ble Court was pleased to allow the said application and the principal employer has come on record.
2. In the meanwhile, the negotiations took place between this II Party and the I Party Union on various issues including one that is the subject matter of this dispute and finally could arrive at a consensus and a settlement was drawn before the competent authority under section 12(3) of the I.D. Act.
3. In the said settlement, the points of dispute referred to this Hon’ble Court is also one of the point and the I Party Union have agreed to withdraw the above dispute and have undertaken to file a memo. However, so far no memo is filed and hence this memo”.

In the circumstances, it is prayed that the above dispute may be disposed off as having become infructuous in view of the accompanying Memorandum of Settlement.

Signed by II Party, S.V. Ramaraju and II Party Advocate, Mr. N.S. Narasimha Swamy.

Perused the material available on record and also the said memo. Accordingly the above dispute is disposed of as having become infructuous in view of the accompanying Memorandum of Settlement enclosed with the memo dated 13.03.2017, filed by the II Party No.1.

(Dictated, transcribed, corrected and signed by me on 17th March, 2017)

V. S. RAVI, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 949.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 27/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.04.2017 को प्राप्त हुआ था।

[सं. एल-12012/381/99-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th April, 2017

S.O. 949.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 10.04.2017.

[No. L-12012/381/99-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/27/2000**

Shri Mohammad Shraiff Khan,
Dy.General Secretary,
State Bank of India Staff Cosngress (INTUC), 5/235,
Pragati State Bank Staff Colony,
Vikasnagar, Jabalpur (MP)

...Workman/Union

Versus

Chief General Manager,
State Bank of India, Local Head Office,
Hoshangabad Road,
Bhopal.(MP)

...Management

AWARDPassed on this 30th day of January 2017

1. As per letter dated 13-1-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/381/99/IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of India, Branch Garha, Jabalpur in terminating the services of Shri Mohammad Sarif Khan from 23-8-92 after engaging him as a temporary messenger/ waterman from 1-11-89 to 22-8-92 with more than 240 days of service in 1990 and 1991 is legal and justified? If not to what relief is he entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through Dy.General Secretary of State Bank Staff Congress at Page 2/1 to 2/3. Case of workman is from 1-11-89, he was appointed as messenger cum waterman. He continuously worked as such till 22-8-92 in vacant post. The services were terminated without notice on 23-8-92. His services were orally terminated without assigning reasons. That he was working from 9 AM to 6 PM every day. He completed more than 240 days during each of the calendar year. His services are terminated in violation of Section 25-F,G,H, N of ID Act. After his appointment, other persons Vikas Pawar, Giri Goswami, Dinesh Sahu, Shailendra Joshi, Punam Chandra Verma, Subhash Purohit, Munnalal Kewat, Anil Tupta, Abhay Kumar Jadhav and others were given permanent appointment. Those persons are still working in the Bank. Giri Goswami and Dinesh Sahu were appointed after appointment of workman are still working. Workman reiterates he completed 240 days continuous service during each calendar year. He is covered as employee under Section 25 B of ID Act. His termination is in violation of Section 25-F,G,H,N of ID Act. Management of 2nd party has not complied with Rule 77,78 of rules under ID Act. Termination of his service amounts to unfair labour practice. It appears wrongly mentioned that termination of his service is covered under Section 2(o)(bb) of ID Act. Ist party workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 5/ to 5/2 opposing claim of workman. 2nd party submits that the dispute is raised before ALC after 7 years. The reference is not tenable. That the Ist party is not appointed following any kind of selection process. There is no employer employee relationship between parties. That Mr. M.K.Patel cannot appear on behalf of workman that Ist party workman Mohd. Sarif was purely engaged on contract basis for limited purpose of filling pot of drinking water. Hardly he worked half hour per day. Management used to pay Rs.5 per day to the workman. 2nd party contends that Ist party workman was not employed as messenger. That during the period of his engagement, he was required to work on contract basis for fetching drinking water and filling pots. He was not required to work 9AM to 5 PM. It is reiterated that the workman was engaged for filling water pot on contract basis. Workman had not completed 240 days continuous working. Termination of workman is not in violation of Section 25-F,G,H,N of ID Act. Management denies that persons mentioned in para 5 of statement of claim were employed by the management. Management admits that termination of service of Ist party workman is covered under Section 2(o)(bb) of ID Act. Management is reiterating that the workman was not continuously working from 1989 to 1992. Engagement of workman was for filling water in pots hardly for 1 ½ hour in a day. Violation of Section 25-F, G, H, N & Rule 77, 78 of ID Act have been denied. 2nd party prays reference be answered in its favour.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of State Bank of India, Branch Garha, Jabalpur in terminating the services of Shri Mohammad Sarif Khan from 23-8-92 after engaging him as a temporary messenger/ waterman from 1-11-89 to 22-8-92 with more than 240 days of service in 1990 and 1991 is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

5. Point No.1 The term of reference pertains to legality of termination of Ist party workman. Workman Mohd Sarif Khan filed affidavit. In his affidavit, he stated that he was engaged from 1-11-89 and continuously worked till 28-2-92 on post of messenger/ waterman. His services were terminated without show cause notice. That he was working from 9 to 6 every day. He worked more than 240 days. That in his cross examination, workman says he passed 8th standard. He was working as messenger in Garha from 1-1-1989 whereas in affidavit, he has stated that he was engaged from 1-11-89. He claims ignorance whether vacant post of messenger was advertised in newspaper. He claims ignorance whether his name was called from Employment Exchange by the Bank. He had not received appointment letter in writing. His attendance was recorded in Bank. His PF was not deducted. He claims ignorance whether PF contribution of other employees in Bank was deducted. The names of the persons given in para 6 of his affidavit are stated by him after looking the attendance register. He claims ignorance where those persons were working. Evidence in cross examination of workman is clear that as he has no knowledge where all those persons names shown in para 6 of his statement is not known to him, it cannot establish violation of principles of last come first go.

6. Management filed affidavit of witness Archana Litoriya. Witness of management in her affidavit says that workman was engaged for limited purpose of filling pot of drinking water is hardly required half hour per day. Workman was paid Rs.5 per day. Ist party workman not continuously worked for 240 days, he was not working between 9 AM to 5PM. Recruitment in management is carried through selection process. Evidence of management witness remained unchallenged as Ist party failed to cross examine witness of management. Workman not produced nor proved any documents about his working for more than 240 days in each calendar year. He has averred in para 17 of his affidavit neither application for production of document by management is filed on record. The evidence of workman and management's witness is on oath against oath. The evidence of management's witness remained unchallenged and therefore the evidence of Ist party workman cannot be preferred to the unchallenged evidence of management's witness.

7. Learned counsel for 2nd party Shri R.C.Shrivastava relies on ratio held in case between-

Surendranagar District Panchayat versus Dahyabhai Amarsingh reported in 2005(8)SCC-750. Their Lordship dealing with Section 25-F, B of ID Act and the matter of adverse inference held courts below for wrongly drawing said adverse inference. The scope of enquiry before Labour Court was confined to only twelve months preceding the date of termination to decide the question of continuation of service for purpose of Section 25-F. Their Lordship dealing with violation of Section 25-F held facts that must be proved by workman to claim protection under Section 25-F are that there exists relationship of employer and employee, he is a workman under Section 2(s), establishment in which he is employed is an industry within meaning of the Act and he has put in not less than one year of continuous service as defined in Section 25 B of ID Act.

In present case, workman has not filed any documents about his appointment, engagement or payment of wages. As observed earlier, unchallenged evidence of management's witness cannot be disbelieved. Workman has failed to establish that he had continuously worked for more than 240 days in one year preceding his termination. As such workman failed to establish his termination is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Affirmative.

8. Point No.2- In view of my finding in Point No.1 workman has failed to establish termination of his service in violation of Section 25-F,G,N of ID Act, workman is not entitled to protection of ID Act. On such ground, workman is not entitled to any relief. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The action of the management of State Bank of India, Branch Garha, Jabalpur in terminating the services of Shri Mohammad Sarif Khan from 23-8-92 after engaging him as a temporary messenger/waterman from 1-11-89 to 22-8-92 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 950.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 14/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.04.2017 को प्राप्त हुआ था।

[सं. एल-41011/62/2008-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th April, 2017

S.O. 950.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Uttar Railway and their workmen, received by the Central Government on 10.04.2017.

[No. L-41011/62/2008-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 14/2009

Ref.No. L-41011/62/2008-IR(B-I) dated 22.05.2009

BETWEEN :

The Mandal Sanghatan Mantri
Uttar Railway Karamchhari Union,
283/63 KH(B) Ghari Kanora, Premwati Nagar
PO Manak Nagar
Lucknow

AND

1. The Varishth Mandal Karmik Adhikari,
Uttar Railway, DRM Office
Hazratganj
Lucknow
2. The General Manager
Northern Railway,
Baroda House,
New Delhi

AWARD

1. By order No. L-41011/62/2008-IR(B-I) dated 25.05.2009 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between The Mandal Sanghatan Mantri, Uttar Railway Karmachhari Union, Lucknow and the Varishth Mandal Karmik Adhikari, Uttar Railway, DRM Office, Lucknow for adjudication.

2. The reference under adjudication is:

“WHETHER THE ACTION OF SR. DIVISIONAL PERSONNEL OFFICER, NORTHERN RAILWAY IN NOT REGULARIZING SERVICES OF S/SRI CHANDRA MOHAN AND SAIDDUREHMAN, FROM THE DATE OF REGULARIZATION THE SERVICES OF THEIR JUNIOR AFTER CANCELLING THE ORDER DATED 20.08.1996 IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE CONCERNED WORKMAN IS ENTITLED TO?”

3. The Schedule was amended vide corrigendum dated 30.07.2009 issued by the Ministry. As per the claim statement, the workman union has stated that Sarva Sri Chandra Mohan and Saiddurehman were appointed as Substitute Cleaner on 15.03.1978 and 01.01.1980 respectively, and they were retrenched illegally on 04.09.1981, which was challenged vide I.D. 48/83 and 56/86 before the CGIT, Kanpur, which had directed for their reinstatement through the award dated 12.02.1987 and 21.05.1987. The management moved before Hon'ble High Court through Writ petition No. 12743/87 and 17910/87, which were dismissed on 05.02.1990 and 28.05.1999 respectively, consequently railway management reinstated both the employees with all back wages etc.

4. The union has further stated that screening committee vide letter dated 29.03.1996 found both the employees fit in Group 'D', vide another letter dated 28.8.1996 both of them were allowed on the post of Callman and Box Porter at serial no.6 and 15 which is against the Rules and also it reflects unfair labour practice. The applicants have stressed that both the employees before their regularization/posting objected regarding the post of Callman and Box Porter and requested to comply the I.D. Award in view of the orders of Hon'ble High Court then they were returned to work on the post of Substitute Cleaner, whereas as other employees junior to the workmen have been regularized, which is violative of principle of natural justice.

5. The union has stated that the Indian Railway Establishment Manual was not followed, other employees found fit for regularization to the post of Cleaner were junior, several representations were made by both the employees which are still pending before the management. With the above pleadings the union has prayed to reject the said letter dated 28.08.1996 and to regularize and post both the employees as per the aforesaid manual with all consequential benefits.

6. The management in its written statement M-8, has denied the allegations leveled in the claim statement. The management has stated that both the employees were re-engaged in compliance of Court's order, notices issued by the Railway Authority were fully justified and screening was completed as per Railway Rules, in principle of natural justice has been followed, allocations of post is based on suitability and other necessary qualification, in accordance with Rules.

7. The management has pleaded that the workman Chandra Mohan raised the I.D. case No. 101 of 2000 before this Tribunal and got award in his favour with certain directions to the Railway which considered the case of worker on the basis of suitability but the workman Saidur Rehman raised the I.D. case No. 78 of 2000 which was decided against him and the Award became final.

8. The Railway Administration preferred the writ petition before Hon'ble High Court against the Award dated 09.10.2001, which is still pending in the court.

9. The workman Saiddur Rehman filed several I.D. cases, some of I.D. cases are pending before this Tribunal. The workman is posted as Box Porter and working at Varanasi. The workman preferred O.A. No. 388 of 2008 before Central Administrative Tribunal, Lucknow against the allocation of post of Box Porter and transfer order by the Railway. The Central Administrative Tribunal, Lucknow heard the O.A. on merit and the rejected vide order dated 17.02.2009. The workman preferred a writ petition against the order of Central Administrative Tribunal, Lucknow before Hon'ble High Court, Lucknow Bench, Lucknow but no stay order has been passed in his favour ultimately he joined the services at transferred station Varanasi on the post of Box Porter. The writ petition is still pending and the issue in dispute is same, so the present I.D. case is not maintainable and liable to be rejected as the matter in dispute is subjudice.

10. With the aforesaid averments, the management has prayed to reject the claim statement; plea of time barred has also been taken by the management.

11. The union while denying the pleadings of written statement, has filed rejoinder W-9 reiterating the facts mentioned in the claim statement.

12. The workman has filed certain papers alongwith the application W-5. In evidence affidavit of Saiddur Rehman and Chandra Mohan have been filed as W-11 and W-12. Both the applicants have been thoroughly cross-examined on behalf of the management. The management filed affidavit of Sri V.K. Saini as M-15, R.S.Kaushik as M-18, the management witness has been cross-examined by the workman. Sri Prasant Rai, DPO has also been adduced in evidence by the management, he has been thoroughly cross examined by the workman.

13. Arguments of Learned AR of both the parties have been heard at length. Record has been perused thoroughly.
14. The workman's union has come up with the case that the workmen viz. Said-ur-rehman and Chandra Mohan were screened by the railway management vide their letter dated 29.03.96 and they were declared fit against Group 'D' post; and accordingly, the workmen, Chandra Mohan and Said-ur-Rehman were allotted post of Call Man and Box Porter vide serial No. 6 & 15 of letter dated 20.08.96. It had been alleged by the workman's union that before allotment of the post the workmen were called by the Divisional Office vide letter dated 24.05.96 for regularization which is against Railway rules and natural justice.
15. In rebuttal, the authorized representative of the management has submitted that the railway management forms the Screening Committee, which screen the casual labour and substitutes who are on the roll of Railway. The allocation of post is done on the basis of suitability and other necessary qualification. It has been submitted that there is no illegality in allotment of posts and also there is no violation of natural justice on the part of management. The management has also asserted that the claim is highly belated one and had been preferred after lapse of 14 years and is liable to be rejected on account of delay and laches.
16. I have given my thoughtful consideration to the rival contentions of the parties and scanned entire evidence available on record.
17. The workman's union has come up with the case that the workmen whose cause has been espoused in the present industrial disputes have been screened by the railway management but have not been allotted posts in accordance with their seniority and suitability.
18. Per contra, the case of the management is that the workmen have been screened by a Screening Committee and the workers declared successful were allotted posts in accordance with their suitability. Moreover, it has also been pleaded by the management that the workman Chandra Mohan raised the I.D. Case No. 101/2000 before this Tribunal and got award in its favour with certain directions for the management for consideration of the case of the workman on the basis of suitability; whereas the case of the workman, Said-ur-Rehman, registered as ID No. 78/2000 was decided against him. It is also the case of the management that the present industrial dispute is highly belated one and had been preferred after an inordinate delay of 14 years.
19. Having gone through rival pleadings of the parties and oral evidence adduced by the parties in support thereto it is apparent on the face of record that the workmen, viz. Chandra Mohan and Said-ur-Rehman were screened and declared successful vide letter dated 29.03.96 and were allotted post of Callman and Box Porter respectively vide letter dated 20.08.96. The workman's union has alleged that the management has regularized their services vide letter dated 24.05.96 prior to allotment of posts vide letter dated 20.08.96 with a pre-occupied mind set, ignoring their suitability. But on close scrutiny of the letter dated 24.05.96, it comes out that the letter dated 24.05.96 is in continuation to letter dated 29.03.96; whereby the successful screened candidates were called upon to file various documents for filling up their Service Record and regularization of their services. Hence, there was no illegality on the part of management by issuing letter dated 24.05.96 as it was not the letter for regularization; but a move to facilitate the department to prepare Service Record of the workmen on their regularization.
20. Further, the workman, Chandra Mohan in cross-examination stated that he had been appointed in railway on 15.3.78; but was not given any appointment letter. He further stated that he had been screened and was declared successful against post in Group 'D'. He also stated that at present he is working on the post of Loco Cleaner and he never challenged the report of screening committee before any court of law. The other workman, Said-ur-Rehman in his cross-examination has stated he had been appointed as cleaner on 01.01.1980. He also stated that he had been screened in the year 1994 and that he filed an Original Application No. 388/2008, which was decided against him.
- In rebuttal, the management witness stated that both the workmen were screened in 1996 and were allotted posts in accordance with the recommendations of the Screening Committee. He also stated that Chandra Mohan filed ID No. 101/2000; and Said-ur-Rehman filed ID No. 78/2000 before this Tribunal which has been decided against him. In cross-examination he stated that all the workmen were found fit in Group 'D' category vide letter dated 29.03.96. He also stated that the case filed before CAT, i.e. OA No. 388/2008 by Said-ur-Rehman was decided against him.
21. Thus, from the evidence it is clear the workmen whose case has been espoused in the present industrial dispute had earlier filed industrial dispute before this Tribunal and CAT. Latest, one of the workman, Said-ur-Rehman filed an Original Application No. 388/2008 before Hon'ble CAT, Lucknow Bench, Lucknow which had been dismissed with observation that the post held by the workman and the post claimed by him have same pay scale, allowances and pensionary benefits, therefore, the conduct of the applicant in avoiding appointment on such a post on regular basis is not reasonable. Also, the ID filed by workman, Said-ur-Rehman had been decided against him, Hence, in view of above I do not find any merit in the case of workman Mr. Said-ur-Rehman.

The workman, Chandra Mohan has stated that he never disputed the report of Screening Committee before any Court; however, the ID filed by him before this Tribunal was decided in his favour, giving a direction to the

management for consideration of the workman on the basis of suitability. There is no iota of evidence on the record, on behalf of the parties, that what happened in compliance of the award. Accordingly, the claim of the workman, Chandra Mohan seems reasonable and sustains in the eye of law.

22. Further, the management has pleaded that the case is highly belated one and is liable to be rejected. There is an admission in this regard by the workman, Chandra Mohan, who stated in his cross-examination that he never agitated the report of Screening Committee before any Court. Also, the workman's union has not explained the delay sufficiently.

In the Chief General Manager, State Bank of India, Chief Office, Lucknow vs. B.C. Verma & another 1994 LLR 29; where the question for consideration before Hon'ble Allahabad High Court was whether inaction or delay in raising industrial dispute by the workman can be condoned; Hon'ble High Court observed as under:

“In the present case, Section 10(1) may be read along with Section 10 (5). Both the sub-sections read together lead to conclusion that ‘at any time’ the Reference can be made in the exercise of the administrative power by the Central Government provided there exists an industrial dispute or the same is apprehended. The use of expression “at any time” in both the sub-sections clearly indicates that Legislature never intended any limitation to be imposed for making reference.”

In the present case, admittedly there is delay of approximately 14 years and the workman's union has failed to explain the same.

Hon'ble Apex Court in *Ajaib Singh vs. Sirhind Co-operative Marketing-cum-Processing Services Society Ltd. & another 1999 LAB IC 1435* where there was admitted delay of seven years has held that the Court can mould relief by refusing back wages or directing payment of part of back wages.

23. Accordingly, from the facts and circumstances of the case and discussions made hereinabove, I am of considered opinion that case of the workman, Mr. Said-ur-Rehaman is devoid of any merit as he has already exhausted the remedy available to him; whereas in case of Mr. Chandra Mohan, the management of the Railway is directed to consider his case afresh, on the basis of suitability under Rules, within three months from the date of publication of this award. However, in case his claim sustains then he would not be allowed any back wages whatsoever, on account of re-fixation of pay etc. for inordinate delay of 14 years in raising the present industrial dispute.

24. The reference under adjudication is answered accordingly.

25. Award as above.

LUCKNOW

23rd December, 2016

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 951.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ़ हैदराबाद के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. II, दिल्ली के पंचाट (संदर्भ संख्या 40/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.04.2017 को प्राप्त हुआ था।

[सं. एल-12025/01/2017-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th April, 2017

S.O. 951.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of Hyderabad and their workmen, received by the Central Government on 10.04.2017.

[No. L-12025/01/2017-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE**BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI****I.D. No. 40/2010**

Sh. Roshan Lal,
C/o Janvadi General Kamgar Mazdoor Union,
Room No. 95 , Barracks No. 1/10, Jam Nagar House, Sahajahan Road,
New Delhi.

Versus

Assistant General Manager ,
State Bank of Hyderabad,
882, 1st Floor, East Park Road,
Karol Bagh , New Delhi -110005.

AWARD

On 25.11.2010 workman filed claim statement before this Tribunal. Which was registered as ID. No. 40/2010. Where-in he prayed as follows:-

“It is therefore prayed that the services of Sh. Roshan Lal, full time peon may be reinstated with full back wages along with all consequential benefits.”

After service of notice management filed written statement. Where-in management prayed as follows:-

“Where-in he denied the allegations of workman and prayed for dismissal of claim statement.”

Against written statement workman filed rejoinder. Wherein he re-affirmed the contents of claim statement.

On 2.05.2013 following issues were framed:-

1. Whether enquiry conducted by the management was just, fair and proper?
2. Whether punishment awarded to the claimant commensurate to his misconduct?
3. Whether claimant is entitled to relief of reinstatement in service?

And 25.06.2013 was fixed for workman evidence.

Workman in support of his case filed his affidavit on 2.11.2013. Copy of which supplied to Ld. A/R for the management.

Which was tendered by workman as WW1 and he was cross-examined & his cross-examination was concluded.

Management Bank in support of its case filed affidavit of MW1 Sh. P.K. Saxena. Who tendered it on 10.03.2014 and his cross-examination has been could be concluded 7.4.2016.

On 6.6.2016 management closed its remaining evidence then I fixed 4.08.2016 for oral /written arguments by workman.

Management filed written arguments on 6.6.2016 and copy of which supplied to Ld. A/R for the workman.

On 29.11.2016 Ld.A/R for the workman filed written arguments. Copy of which supplied to Ld.A/R for the management. I fixed 25.01.2017 for oral arguments if any. Which were heard and Award was reserved.

In the light of contentions and counter contentions I perused the pleading and evidence of parties on record as well as I perused the award dated passed in I.D. No. 175/2004 by Sh. R.N. Rai the then P.O. on 29.08.2007.

Against which management filed W.P.(C) No. 827/2008. Which was dismissed on 25.02.2008 by Hon'ble High Court of Delhi with detailed order with its specific findings in para 14 and 15. Copy of order has been annexed with written arguments of workman as Annexure –B.

It is also relevant to mention here that management of Bank challenged aforesaid Award through S.L.P(C) No. 11915/2008 as well order dated 25.02.2008 passed by Lordship of Hon'ble Delhi High Court before the Hon'ble Supreme Court. Which was also dismissed on 13.05.2008 by Hon'ble Supreme Court. So Award of I.D. No. 175/2004 and order dated 25.02.2008 passed by Hon'ble High Court of Delhi in W.P.(C) No. 827/2008 have become final.

Copy of order has been annexed with his written arguments by workman as Annexure-C.

So far termination of the workman Roshan Lal at second time by management through its letter dated 9.4.2010 is concerned . It is not at all proper in want of proper inquiry and in want of payment of wages retained by the management fixed under Minimum wages Act.

Perusal of aforesaid letter makes it crystal clear that no formal inquiry was conducted by the management against workman Roshan Lal.

It is admitted fact that no charge sheet and list of witnesses were served upon the workman by the management.

It is apparent that principles of natural justice were violated by management in want of providing service of defence assistant to represent his case.

Moreover no one month's notice, notice pay and compensation were served upon workman by management , so this Tribunal has no option except to decide the termination of services of the workman is illegal, unjustified and unfair.

Perusal of Annexure –D which copy of order dated 6.4.2016 passed by Sh. Avtar Chand Dogra Ld. P.O. CGIT-cum labour Court No. 1 passed in L.C.A No. 11/2013 makes it crystal clear that he allowed the earned wages of Rs. 1,24,181/- with 9% interest to the workman Roshan Lal for the period 28.07.2007 to 9.4.2010. Which shows that management terminated the services of workman without paying his earned wages to the workman. Which is material lapse on the part of management . Which proves the contents of para 6 of affidavit of workman WW1/A.

So non –payment of the earned wages to the workman is a force Labour as per provisions of Article 23 of Indian Constitution and principle laid down by their Lordship of Hon'ble Supreme court in case of Sanjit Vs. State of Rajasthan (1983) 2 S.C.R 271.

In this back ground this Tribunal is compelled to draw an inference that the management denied the wages of the workman during the period since 28.07.2007 to 9.4.2010.

There appears non-compliance of S.25.F ID. Act ,1947 also.

Workman filed his L.C.A No. 66/08 before Sh. Satnam Singh my Ld. Predecessor. Who passed order on 12.10.2010 allowed the retained wage of Rs. 1, 91,255 copy of which is Annexure –E to written arguments of workman.

Against aforesaid order management filed the W.P(C) No. 1830 /2011 which was decided on 17.04.2013 by Hon'ble Delhi H.C. Where-in his Lordship of Delhi H.C. held that the workman is entitled the unskilled wages for the period 5.1.1997 to 27.04.2003. Copy of order of Hon'ble Delhi High Court is Annexure –F.

In this background, it is submitted by the Ld. A/R for the workman that the so called misconduct of the workman is only that the workman did not post the letters as mentioned in para 5 of written statement of management but the management retained his wages for the period 28.07.2007to 9.4.2010 of Rs. 1, 25, 231.1 and the concerned workman was not in position to spent the amount of Rs. 66/- for posting the letters so it cannot be termed as misuse of money by the workman as the management did not pay his earned wages since 28.07.2007 to 9.4.2010. This fact is proved by order dated 6.4.2016 passed by Sh. Avtar Chand Dogra P.O. CGIT –Cum Labour Court No. 1, Delhi in L.C.A No. 11/2013 . So the management cannot take harsh action against the workman Sh. Roshan Lal due to lapses of not posting the letter dated 15.05.2009 and 26.05.2009 and this activity of management is very serious if the management retained the wages of the workman since 28.7.2007 to 9.4.2010.

Aforesaid contentions of Ld. A/R for the workman cannot brushed aside as trivial matter because conduct of management in retaining wages of considerable amount is certainly blame worthy.

Moreover conduct of management appears that it left no stone unturned to whistle out award passed in favour of workman on 29.08.2007 in ID. No. 175/2004 by Sh. R.N. Rai the then P.O. CGIT- cum-Labour Court –II . Through which workman Sh. Roshan Lal was reinstated w.e.f 28.4.2003 with 50% back wages . Although aforesaid award has been confirmed by Hon'ble Delhi High Court in writ –petition (C) No. 827 /2008 on 25.02.2008 as well as by Hon'ble Supreme Court in S.L.P. No. 11915/2008 on 13.05.2008.

On the basis of aforesaid discussion I am of considered view that claim statement of workman is liable to be partly allowed in favour of workman Roshan Lal and against Bank management . Workman Sh. Roshan Lal is liable to be reinstated with 50% back wages since 28.04.2003 minus any amount which has been paid by bank. Management to workman Sh. Roshan Lal in compliance of order dated 12.10.2010 passed by Sh. Satnam Singh the then P.O. CGIT-cum Labour Court-II Delhi, in L.C.A No. 66/2008. Which has been confirmed on 17.04.2013 in W.P.(C) No. 1830/2011 by Hon'ble High Court of Delhi as well as any amount which has been paid by Bank

management to workman Sh. Roshan Lal in compliance of order dated 6.4.2016 passed by Sh. Avtar Chand Dogra P.O. CGIT-Cum Labour Court No. 1 in L.C.A No. 11/2013.

Which is accordingly decided.

Award is accordingly passed.

Dated:-14.02.2017

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 952.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. II, दिल्ली के पंचाट (संदर्भ संख्या 04/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.04.2017 को प्राप्त हुआ था।

[सं. एल-12025/01/2017-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th April, 2017

S.O. 952.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 10.04.2017.

[No. L-12025/01/2017-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI

I.D. No. 04/2011

Sh. Ashok Kumar Bhatia,
House No. 959, Sector 37,
Faridabad-121003 (Haryana)

... Workman

Versus

Assitt. General Manager (Admin.-I),
State Bank of India,
Delhi Administrative Office-I,
11 -Parliament Street,
New Delhi-110001

...Management

AWARD

Workman filed Claim statement directly u/s 2A of I.D.Act on 24.01.2011. Through which workman prayed as follows:-

“That the workman be reinstated with back wages and continuity of service and suitable damages be imposed on the management for causing harassment and torture to the workman.”

Against claim statement management filed written statement on 11.10.2011. Where-in management prayed as follows:-

“It is reverentially prayed that the Hon’ble Tribunal be pleased to decide the reference in favour of the management with compensatory costs.”

Workman filed rejoinder on 16.01.2012. Where-in he re-affirmed the contents of claim statement.

My Ld. Predecessor proceeded to decide the case on the basis of fairness of domestic enquiry and fixed for Workman evidence.

Workman in support of his case filed his affidavit on the point of enquiry to show that enquiry was not just , fair and proper and was conducted in violation of principles of natural justice.

He tendered his affidavit as WW1 and she was cross-examined at length but nothing could be extracted out in his cross-examination.

Management in support of its case to show that enquiry was just, fair and proper as well as principles of natural justice were followed produced MW1 Rajender Singh Gahlan . But neither he was enquiry officer nor presenting officer nor he was not present at the time of conduction enquiry.

Hence I decided enquiry issue as preliminary issue against management of State Bank of India and in favour of workman Sh. Ashok Kumar Bhatia on 14.03.2016.

However I afforded an opportunity to management of State Bank of India to prove misconduct of workman Sh. Ashok Kumar Bhatia. Fixing 30.03.2016 to prove misconduct of workman Sh. Ashok Kumar Bhatia.

Against aforesaid order management has not sought any remedy. So aforesaid order has become final.

In-compliance of aforesaid order management filed affidavit of MW2 Sh. P.S. Juneja. Who tendered his affidavit on 10.08.2016 and cross-examined by Ld. A/R for the workman.

Management in support of its case filed affidavit of MW2 Sh. P.S. Juneja. Who tendered his affidavit on 10.08.2016 and cross-examined by Ld. A/R for the workman.

Who were neither enquiry officer nor presenting officer nor remain present in enquiry . He is not eye witness his evidence is based on documents only.

Hence his evidence was not sufficient to prove misconduct of workman Sh. Ashok Kumar Bhatia etc.

Thereafter Ld. A/R for workman stated that there is no need to give evidence by workman in rebuttal hence I fixed 10.08.2016 for arguments.

Workman filed written arguments on 29.09.2016. Contents of written arguments are as follows:-

VIOLATION OF PRINCIPLES NATURAL JUSTICE

1. That the present case is live testimony of violation of Natural Justice and grant of fair opportunity to a workman form defending himself. It is apparent from the record that workmen was declined to be represented through a person of his choice without any reason despite the fact that the proposed representative was otherwise capable competent to represent the workman. Further , the workman was not provided documents relied upon by the Bank against him despite written request by him.

VAGUE AND EVASIVE ALLEGATIONS

2. That from the bare reading of the Charge sheet it is apparent that the allegations made therein were evasive and vague without any supporting documents.
3. That none of the allegations leveled against the workman were proved against him by the respondent either during Departmental Inquiry or before this Ld. Tribunal in the present Proceedings by leadings cogent and credible evidence.

NO TESTIMONY OF WITNESS

4. That during the inquiry proceedings the witness produced by the Bank did not support its case rather the testimony of the witnesses produced are in favour of the workman.
5. It is pertinent to mention here that the Bank did not examine some of the alleged witnesses/depositors mentioned in para6 of the letter no. PNC /24 date 14.12.2007.
6. The witness Sh. P.S Juneja during his course of examination admitted that Ms. Surjit Kaur who is alleged to one of the allegeds Complainants which triggered the disciplinary proceedings against the workman did not lodge any complaint against the workman and he further admitted that there is no discrepancy in the cheque (Ex. P-7) issued by her. It is pertinent to point out herein that in the cross-examination the witness admitted that Smt. Surjit Kaur was former Employee of the Respondent having retired from the Kalkaji Branch. In such scenario it is unbelievable that she was not procedure and functions of the Bank, respondent herein.

FALSIFICATION OF DOCUMENTS

6. That the Bank tried to make a case against an employee on the basis of false/non-existence documents which is apparent from the fact from the mention of letter dated 10.12.2008 written by one alleged customer Sh. N.K. Batra, interestingly the date mentioned on the letter is of the last day of the inquiry proceedings. It submitted that the said letter was never produced either in Departmental Inquiry or before this Tribunal.

DISMISSAL OF APPEAL DESPITE THE FACT THERE WAS NO DELAY

6. The workman was communicated the order of dismissal vide letter dated 7.05.2010 which was received by him on 25.05.2010 as pointed herein above the order did not advice the dame of Appellate authority and in such circumstances the workman vide letter dated 8.06.2010 requested for the name of Appellate authority. The Bank informed the workman about the Appellate Authority vide letter dated 28.06.2010 which was received by him on 1.07.2010. The workman filed his Appeal with the Appellate Authority on 9.7.2010 well within the period of limitation.

NO LOSS

7. That the management has miserably failed to establish that either the alleged complainants or the bank suffered any loss because alleged activities of the workman.

It is therefore in view of the submission made in herein above the Industrial Dispute Claim filed by the workmen in liable to be allowed reinstating the workman with back wages and continuity of service and suitable damages imposed upon the Bank, Respondent herein.

Management filed written arguments on 17.10.2016. Contents of written arguments are as follows:-

1. The workman while posted as Single Window Operator at Kalkaji branch, was dealing with Senior Citizen Savings Scheme Accounts. The amount tendered by him in his personal account in his name and his wife's name Smt. Interjit Bhatia. When his misconduct was detected, he deposited the amount in the customer's account from his account, alongwith the quarterly interest payable on the amount by the Bank.
2. The workman has made the following admission:

“ Sir, my intention were very clear and not suspicious and I performed by duties honestly. It was totally negligence and I did not attempt to fraud but due to friendly relations with customers, I made entries in my personal account. I request Bank to take lenient view and reinstate me.”

The Bank employees are not permitted to have any relations with customers. Thus putting the amount of the customer in his account and after detection transferring funds from his account to the customers accounts, alongwith interest which the bank would have paid to customer shoes that he was running parallel banking in the back.

3. P.C Juneja deputy manager state bank of India G.K Delhi stated in his evidence;
 1. That he was posted in Kalkaji branch of the bank the relevant period.
 2. The claimant has subjected the Bank to loss of integrity and reputation. He has lost the faith of the Bank. He was working as Single Window Operator and dealing with the Senior citizen saving scheme for deposit in their accounts. The amounts tendered by certain depositors have been routed through the personal accounts in his name and his wife's name Smt. Inderjeet Bhatia.
 3. On 1.07.2006 an amount of Rs. 500000/- was debited to customer account 29076 of Sh. Narinder Kumar Batra, vide cheque No. 688754 dt... 1.7.2006 (PEX-1) and was credited to Sh. A.K. Bhatia's saving account, jointly operated by Inderjeet Bhatia and Sh. A. K. Bhatia. The name of payee was filed by the workman . Sh. Batra complained (Ex. P-2) that the said amount was deposited on July 07 for opening Sr. Citizen account, but the account was not opened and Sh. Bhatia had returned the amount to him after using it in his account.
 4. Passbook of Sh. Narinder Kumar Batra was prepared by the workman manually and entry of Rs. 5 lacs was written by him and date was same when the cheque was debited (1.07.2006) (Ex. PEX-3-6).
 5. In case of Surjeet Kaur A/c 1072412834 holder of the Bank, the workman received the cheque of Sr. Citizen a/c., which is specifically written at the back of the cheque that the cheque it was for her senior citizen account favouring PPF but the workman filled the cheque in the name of his wife, Smt. Inderjeet by his own handwriting and deposited in A/c 1072408913, jointly operated by him and his wife. (PEX.7).

6. Sh. Bhatia utilized the funds of the customers of the Bank for his own use. Mrs. Surjeet Kaur complained to me that Sh. Bhatia had put her money in his account but after three months told me that he had put it in her account alongwith interest (Same rate of interest as payable by the Bank)
7. In case of Harsharan Kaur, she gave a cheque of opening Sr. Citizens account. The workman did not credit the amount in her account. (PEX.8) .
8. He did not close the society account before availing the personal loan by the Bank.
4. The evidence of Sh. Juneja is un rebutted.
5. The management is a nationalized financial institution thriving on the faith and investment of general public. Its employees cannot be allowed to perilize and gnaw the very existence of the institution. Financial irregularities by employees of financial institutions mars the existence of the institution itself. The employees of the nationalized Banks are expected to maintain higher standards of morale, integrity and honesty.

Sh. Narender Kumar Batra being senior citizen having his saving Bank but A/c in branch of State Bank of India.

Where-in workman was posted as cashier and mis-appropriated the deposited amount and subsequently deposited it in his Joint A/c. On this count Ld. A/R for the management stressed that the conduct of workman is such which disentitled desalted him to relief of reinstatement etc.

In the light of contentions and counter contentions in perused the evidence of parties on record which makes it crystal clear that opportunities was afforded to parties to lead their evidence on the point of domestic enquiry. Which compelled me to draw an inference that domestic enquiry conducted against workman by management was not just, fair, proper and legal. So I decided enquiry against management and in favour of workman. But I permitted to management of State Bank of India to prove misconduct of workman Sh. Ashok Kumar Bhatia.

In spite of several opportunities management neither produced Enquiry Officer nor Presenting Officer nor main victim Sh. Narender Batra who is said to have deposited Rs. 5,00,000/- on 1, July 2006 through Cheque No. 688754 relating to A/c No. 29076 and other victims.

Hence Sh. Narender Kumar Batra etc. who were material witnesses in the instant case to prove the fact that aforesaid deposited amount was credited by workman in his Joint Saving Account with his wife Inderjeet Bhatia.

Such fact can only be proved by management through production of Sh. Narender Kumar Batra etc but management could not produce them to prove aforesaid fact of misconduct of workman.

Hence non-production of material witness compel me to draw an adverse inference against management i.e. If they have been produced then they would have not supported the management of State Bank of India on the point of misconduct of workman.

Which is accordingly drawn as per provision of section 114(g) of Indian Evidence Act and settled law of Hon'ble Supreme Court on the point of S.114 (g) of Indian Evidence Act.

On the basis of aforesaid discussion I am of considered view that management has utterly failed to discharge its burden to prove mis-conduct of workman Sh. Ashok Kumar Bhatia through its required evidence.

Hence alleged misconduct of workman Sh. Ashok Kumar Bhatia is liable decided against management alongwith other facts and in favour of workman as allegation of misconduct of workman Sh. Ashok Kumar Bhatia by management is not proved due to want of required evidence of management.

Which is accordingly decided.

Hence workman Sh. Ashok Kumar Bhatia is entitled for reinstatement with full back wages.

Reference is liable to be decided in favour of workman and against management of State Bank of India. Which is accordingly decided.

Claim statement is allowed with direction to management of State Bank of India to reinstate the workman Sh. Ashok Kumar Bhatia with full back wages within two months after expiry of period of available remedy against this award.

Award is accordingly passed.

Dated:-28/12/2016

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 953.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डीएमआरसी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 64/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.03.2017 को प्राप्त हुआ था।

[सं. एल-12025/01/2017-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th April, 2017

S.O. 953.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of DMRC and their workmen, received by the Central Government on 10.03.2017.

[No. L-12025/01/2017-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER : CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, KARKARDOOMA COURT COMPLEX, SHAHDRA, DELHI-32

ID NO. 64/2014

Maqsood Raja,
S/o Late Sh. Md. Razual Haque,
D-10, Main Market Shakarpur,
Delhi – 110092

...Workman

Vs.

R.K. SHARMA (AGM) & Ors.
PMI, Department, FEMC- PRATIBHA, J.V.,
CC-23, DMRC, Project Side, Chirag Delhi,
Office: Pushpa Bhavan, Pushp Vihar,
Delhi – 110062

...Management

AWARD

The present case was filed by the workman under sub section 2 of section 2(A) of ID Act 1947 (in short the Act) with the averment that he was appointed as mechanic of F.E.M.C- Pratibha JV on 01/01/2013 and was posted in the office of the management. The workman always performed his duty with due diligence and to the entire satisfactory of management. There was not even a single complaint to the management during his service period. The workman was getting salary of Rs.17000 per month. He was performing duty beyond the scheduled hour even on Sundays and holidays.

2. The workman got injured during the duty hour at the site of the management and Rs. 3000 was spent by the workman on his medical treatment.

3. It is also alleged that workman reported for duty on 10/02/2014 and in the evening officials of the management came to the workman and bate him mercilessly. He was also told that his services are no longer required. Thus, he was terminated orally without any reason or written notice. The management had adopted the policy of hire and fire at their sweet will and thus indulged in unfair labour practice. The workman also visited the office of the management time and again for his reinstatement, but all in vain. Finally, workman filed a complaint before Labour Court against the management where conciliation proceedings took place without any fruitful result. Lastly, ALC (Central) issued a failure certificate dated 16/06/2014.

4. The claim was contested by the management who filed written statement and took several preliminary objections, inter-alia of maintainability claim being bad for mis-joinder and non-joinder of necessary parties etc. It was admitted in Para 3 of written statement that workman was appointed at monthly compensation of Rs. 17000 per

month vide agreement dated 20/06/2013. The said contract for a period of one year effective from 01/07/2013 and same may be renewed by mutual consent for such further period as agreed upon between the parties. The job of the workman was not permanent but was for specific period till the project was in progress. It is denied that workman had suffered and injured at the site of the management. The workman was not sent to the Kashmiri Gate as alleged rather the workman was absent from his work on 30/01/2014 and he remained absent till 05/02/2014 without any prior intimation. On 06/02/2014 he intimated about the personal injury caused to him then he was asked to take complete rest and to furnish his medical leave and to come with medical fitness certificate only. The workman has come on his duty on 10/02/2014 and in the evening he asked the answering respondent for transfer to his previous site. When the workman was shown inability to send him to his desired site, he became short temper and left the premises at once. Thereafter, he never turned up to site for his work despite notices were sent by the answering respondent to the workman to join his duties. The allegations of beating as leveled in this Para are totally false. The workman left the work on his own. The answering respondent has not terminated the services of the workman on that day. The workman never turned to take his earned wages for two/three days and the answering respondent is still ready to pay the earned wages of the workman. The workman be asked to collect his earned wages by visiting the site of the answering respondent. The management denied other averments contained in statement of claim.

5. The workman filed rejoinder to the written statement filed by management and reasserted the earlier stand taken in statement of claim.

6. This tribunal on the basis of the pleadings of the parties Vide order dated 21/10/2016 framed the following issues:

- (i) Whether termination of services of the claimant on 10.02.2014 is illegal and unjustified and workman is liable to be reinstated?
- (ii) Whether petition is not legally maintainable as this court does not have jurisdiction to adjudicate the case?
- (iii) Whether the claim is not maintainable in view of various preliminary objections?

Issues No. (ii) was treated as preliminary issue as it pertains to the maintainability of the present petition.

7. I have heard Sh. Saurabh Rastogi A/R for the claimant and Sh. M.S. Aggarwal A/R for the management.

8. Admittedly, the present case was filed by the workman herein, under section 2(A) of the Act in as much as no reference was made by the appropriate government within period of 45 days from the date the workman approached the conciliation officer by filing application for conciliation of the dispute. There is considerable force in the contention of the management that workman has not impleaded Delhi Metro Rail Corporation (D.M.R.C) as party and the case is not legally maintainable against the management which is a private party. During the course of argument it was fairly admitted by the Ld. A/R for the workman that DMRC is a necessary party and without impleadment of the same the matter can not proceed further on merits. The workman is required to implead his principle employer who is under the control of its appropriate government as a party. The expression appropriate government is defined in section 2(A) of the Act and it means the central government or the state government according to the nature of industrial dispute. Industrial dispute would be cognizable by this tribunal if such a dispute relates to an industry or establishment over which the central government has the control. In the present case the appropriate government in relation to the workman herein, is DMRC whose impleadment is necessary for the adjudication of the case.

9. The management in the present case is a private company or contractor who does not fall within the definition of expression, "appropriate government" as defined in the Act. In fact, the principle employer, i.e, DMRC has outsourced the work and awarded a contract to the management Under Contract Labour Act 1970. The management herein, is not an industry carried on under the authority of central government nor central government has any administrative or effective control over the management. The net result of the discussion is that the present claim filed by the management under section 2(A) of the Act is not legally maintainable solely against the management.

10. It is clarified here that rejection of the claim of the workman is only for legal and technical reasons and there is no adjudication of the case on merits. Resultantly, the workman would be at liberty to file fresh claim before this tribunal by impleading DMRC as a necessary party as claimants was prosecuting the present case before this tribunal in bonafide manner. Thus, workman is at liberty to file fresh case as early as possible before this tribunal in accordance with law. An award is accordingly passed and Let the award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

January 11, 2017

A.C. DOGRA, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 954.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 297/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.04.2017 को प्राप्त हुआ था।

[सं. एल-41012/5/99-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th April, 2017

S.O. 954.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 297/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 10.04.2017.

[No. L-41012/5/99-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/297/99

Shri Vishali S/o Bhailal
R/o Vill. Rithi, PO Rithi,
Tehsil Katani,
Jabalpur (MP)

...Workman

Versus

Divisional Railway Manager,
Central Railway,
Jabalpur (MP)

...Management

AWARD

Passed on this 31st day of January 2017

1. As per letter dated 25-8-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/5/99/IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Central Railway, Jabalpur in terminating the services of Shri Vishali S/o Shri Bhailal, Gangman w.e.f. 14-11-96 is legal and justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 7/1 to 7/4. Case of Ist party workman is that he was appointed on 12-12-1986 as Gangman in pay scale Rs.775-1025 at PWI, W.C.Rly. His services were terminated on 14-11-96 after 10 years service. That when he fell ill on 8-5-95, he was receiving treatment from Private Doctor. On 23-10-96, Railway Doctor Jabalpur directed DMO Damoh to issue duty certificate after his examination. Meantime the management had issued chargesheet dated 10-10-95. Enquiry was conducted without considering his medical certificate. Workman was removed from service vide order dated 14-11-96. For the charge of unauthorized absence for the period from 8-5-95 to 0-10-95, the workman challenged termination of his service filing appeal on 27-11-96. Any action was not taken on his appeal. Therefore he raised dispute before ALC, Jabalpur. That his absence was on account of illness. The certificate issued by Railway Doctor was not considered by the authorities before passing order of removal. That punishment is imposed violating principles of natural justice. The misconduct alleged is not serious justifying removal from service. Lesser punishment of withholding increments could have been imposed. Workman further submits after removal from service, he is unemployed. His family is facing financial hardship. That lesser punishment except retirement could

have been imposed against him. On such ground, workman prays for setting aside order of his removal and prays for lesser punishment.

3. 2nd party filed Written Statement at Page 9/1 to 9/4 opposing claim of workman. 2nd party submits that the workman was working as MRCL from 12-12-86. He was transferred from PWI Damoh to PWI Damoh West w.e.f. 4th & 5th May 1995. On 7-5-95, workman proceeded on rest. Workman had completed 8 years, 4 months, 24 days service. It is reiterated that workman unauthorisely absent from 7-5-95 to 10-10-95, his absence was unauthorised. Workman did not inform about his absence from duty to the concerned officer. On 10-5-95, when workman attended office, he was not taken on duty due to long unauthorized absence. Enquiry was initiated against workman. Workman had not received treatment from Railway Doctor. He did not produced certificate from Railway Doctor about his illness. All adverse contentions of workman are denied. Workman had filed appeal challenging the order of his removal. Workman failed to appear before Appellate Authority, appeal was decided in his absence. Workman was given full opportunity for defending the case. After going through reply, punishment of removal was imposed against him. The order of removal was not violative of principles of natural justice. Workman himself accepted his guilt in Enquiry Proceedings. 2nd party submits that claim of workman cannot be accepted.

4. Workman filed rejoinder at Page 10 reiterating his contentions in statement of claim.

5. Workman died during pendency, his widow Phoolbai is substituted on record.

6. As per order dated 11-12-14, enquiry conducted against workman is found legal.

7. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal/removal imposed against workman is proper and legal?	In Negative
(iii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

8. Point No.1- Vide order dated 11-12-14, enquiry conducted against workman is found legal. Exhibit W-1 is standard form Chargesheet No.5 charges alleged against workman pertains to unauthorized absence from 8-5-95 till 0-10-95 i.e. 5 months and 2 days. In Exhibit W-4- Enquiry Proceedings, workman has admitted charge of unauthorised absence. He has also answered that he had not taken permission to leave office. He had not given intimation about his absence to the office. In Enquiry Proceedings, workman explained that he was ill and unable to attend duty. Workman had shown his willingness to resume duty after recovering from illness. Documents pertaining to enquiry are produced at Exhibit W-3 to 6. Copies of medical reports are also produced by workman. Exhibit W-8 is reply submitted by workman explaining absence on account of his illness. As Ist party workman has admitted his absence, he had not given intimation about his illness to the Competent Officer, application for leave was not submitted, charge of unauthorized absence against workman is established. For above reasons, I record my finding in Point No.1 in Affirmative.

9. Point No.2- In view of my finding in Point No.1 charge of unauthorized absence is proved against deceased workman. The contentions of workman that his services were terminated without enquiry cannot be accepted as the documents pertaining to the enquiry conducted are produced on record. The period of unauthorized absence is 5 months and 2 days. Workman was in service from 12-12-86, his services were terminated on 14-11-96. Said period was not taken into consideration. The explanation given by workman that he was unable to attend duty as he was suffering from illness was not considered while imposing punishment of removal. Considering short period of about 5 months of unauthorised absence of workman, punishment of removal appears shockingly disproportionate. The written notes of argument submitted by management doesnot cover above point why lesser punishment was not imposed against workman. Workman is dead, reinstatement is not possible. Considering the facts and evidence on record, punishment of dismissal deserves to be modified to compulsory retirement. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of management of Central Railway, Jabalpur in terminating the services of Shri Vishali S/o Shri Bhailal, Gangman w.e.f. 14-11-96 is not legal and proper.
- (2) Punishment of removal/termination is modified to compulsory retirement. 2nd party is directed to allow retiral benefits as per rules to widow of deceased workman.

Monetary benefits as per award be paid to widow Phoolbai within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 955.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, दूरसंचार, बीएसएनएल, मदुरई व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 129/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/24/2003-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 955.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 129/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom, BSNL, Madurai and others, and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/24/2003-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 22nd March, 2017

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 129/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Another and their workman)

BETWEEN :

The Circle Secretary BSNL Employees Union No. 3/71, 4 th Street, Raghava Nagar Madipakkam Chennai-600091	:	1 st Party/Petitioner Union
---	---	--

AND

The General Manager, Telecom, BSNL, No. 2, VP Rathinasamy Nadar Road Bibikulam Madurai-625002	:	2 nd Party/1 st Respondent
---	---	--

Appearance:

For the 1 st Party/Petitioner Union	:	M/s K.M. Ramesh, Advocates
For the 2 nd Party/Respondents	:	Sri D. Simon, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40011/24/2003-IR (DU) dated 31.07.2003 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the demand of the Union for absorption of 57 Housekeeping Labourers who worked under BSNL, Madurai is justified? If so, to what relief they are entitled to?”

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 129/2003 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a Registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The dispute is raised on behalf of workmen working in the Office of BSNL, Madurai. They are doing the work of Water Boy, Scavenging Work, Cleaning Work, etc. These workmen are working directly under the control and supervision of BSNL. They are doing the very same work carried out by the permanent employees of the Department. The work done by them is perennial in nature. The workmen cannot be treated as contract labour but have to be treated as part and parcel of the regular service of the Department. All the workmen concerned in the dispute are Class-IV employees for which sponsorship from Employment Exchange is not required. The work performed by them are essential. The so-called contract system is a sham one. The overall control of the workmen including administrative control remained with the Department. The alleged Contractors are regular staff of the Department. They engage the workers, supervise the work, take their attendance and claim and pay their wages. There are regular sanctioned posts for regularizing the workmen concerned in the case. The BSNL is an establishment as per Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act. The concerned workmen having completed 480 days of work in a period of 24 calendar months also should be made permanent. An Award may be passed holding that the workmen are entitled to regular absorption in the service of the establishment from the date of their joining together with continuity of service and attendant benefits.

4. The Respondent has filed Counter Statement contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of BSNL. The petitioner is not a recognized union. The subject matter of the claim does not relate to the service conditions of any of the employees of BSNL. As such the claim is not maintainable. The Contractors have not been impleaded as parties. So the dispute is bad for non-joinder of necessary parties. It is not correct to state that the concerned workmen are doing work of the same nature as done by regular employees, that the work is perennial in nature, that there is direct control and supervision by the Respondents, that the Contractors are the Officers of BSNL, etc. Though the petitioner has admitted that the workmen are contract labourers they are described as casual labourers doing the work of Class-IV employees. These are mutually inconsistent pleas. In the case of contract labourers there is no supervision or control by the principal employers. The petitioner having admitted that the concerned workmen are contract labourers, the question of their absorption or regularization do not arise. The Respondents have not been prevented from engaging contract labour. The Respondents do not know about the details of the concerned workmen. It is the Contractors who do the work and they only know about the details of their workmen. If the workmen have worked for more than 480 days they are to claim permanency with the Contractors and not with the Respondents. The petitioner is not entitled to any relief.

4. The evidence in the case consists of oral evidence WW1 to WW3 and MW1 and documents marked as Ext.W1 to Ext.W16 and Ext.M1 to Ext.M12.

5. **The points for consideration are :**

“Whether the workmen concerned in the case are entitled to the relief of absorption in the Respondent establishment as claimed?”

The Point

6. The Petitioner Union has raised the dispute on behalf of 57 workmen whose names and other details are given in the annexure to the schedule of reference. The annexure contains the year in which they have started to work, the unit in which they have worked, etc. also. All the concerned workmen are said to be working as Water Boy, Cleaning Workers, Scavenging Workers, etc. According to the petitioner, though these workmen were working allegedly through a Contractor they continued to work even after the Contractors changed. They are said to be directly under the control and supervision of the officials of the Respondent. The so-called contract system is said to be a sham one. It is stated that Contractors were always the employees of the Respondent themselves. The petitioner has claimed absorption of the workmen in BSNL.

7. The petitioner has examined two workmen to establish the case. WW3, the Circle Treasurer of the Union is examined to meet the case that the petitioner has no locus-standi to raise the dispute.

8. WW1 has stated in his affidavit that the concerned workmen are cleaning he premises, sweeping and washing the floor, etc. Wages are said to have been paid by the Junior Telecom Officer of Sholavandan, Madurai District. The workmen used to be paid weekly and sometimes even monthly. Items like disinfectant, broomstick, etc. used to be supplied by BSNL. WW1 has stated that so-called contract system through which they have allegedly worked is a sham one. WW2 also has given evidence in tune with the evidence of WW1. Both of them have given the names of Officers who are said to have extracted work from the workmen in their respective affidavits. They have claimed that they are entitled to be absorbed in the establishment, the contract system being sham and also because they have worked for more than 480 days within a period of 24 calendar months.

9. It is to be seen whether the documents marked justify the case set up by petitioner. Ext.W1 is only a copy of the annexure to the schedule of reference. Ext.W2 contains two certificates in respect of WW1, one of February 1998 and another of March 1999. Ext.W3 contains the details of some sweeping work done in 2003. This does not contain the name of the concerned workmen. Apart from this is the fact that this is a document that has come into existence after the dispute was raised. Ext.W4 (series) are payment receipts signed by Sub-Divisional Engineer. These receipts contain the signature of the Contractor. On perusal of Ext.W4 (series) it could be seen that these are receipts containing the signature of different persons including WW1 who has signed as Contractor. The series are in respect of different persons and it could not be made out whether all these persons have been working continuously for the Respondent. Ext.W5 is the document described as Key Movement Register and occasionally contains the name of WW1 also. This document starts from 24.07.2000. Even if this document is taken as a genuine one this would not show that WW1 was working continuously during the period. This document does not contain the signature of any official of the Respondent. Ext.W6 gives account of payment made by some Junior Telecom Officer of the erstwhile Department of Telecom starting from 14.01.1999. On intermittent dates payments are seen made to WW1 as well for doing cleaning work. Though the document gives details on a daily basis, the name of WW1 appears only occasionally, on intermittent dates. Ext.W7 is a delivery slip of the year 2005 much after the dispute was raised. Ext.W8 contains certain photographs out of which nothing could be made out. The same is the case with the photographs marked as Ext.W9 also. Ext.W10 is described as Engine Log Book of Rajdhani Exchange on a day to day basis. However, it could not be made out from this if WW1 or any other workman involved in the case have got anything to do with this. Thus the documents purportedly in respect of WW1 does not help him in establishing the case.

10. Jayakumar, another workman concerned in the case has been examined as WW2. He has stated in his affidavit that he has been doing the work of house-keeping and he has claimed that he has completed more than 480 days of continuous service within a period of 24 calendar months and is entitled to be absorbed in the establishment. Ext.W11 are said to be payment receipts in respect of WW2. These are receipts issued on days on which work was done. Payments are seen made on intermittent dates. The signature of WW2 appears below the column for signature of the Contractor/Tenderer. It is not clear if he was doing the work himself or getting it done through someone else. In any case, only a few documents prior to the raising of the dispute are available in respect of this witness. These are not sufficient either to establish the case that the contract is a sham one or that he had worked continuously for more than 480 days continuously within 24 calendar months. In the absence of documentary evidence it is not possible to accept the case put forth by WW2 as well.

11. So far as the other workmen involved in the case are concerned there is total dearth of evidence. So their case has to be rejected even without any discussion.

In view of the discussion above the reference is answered against the petitioner. An Award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri M. Kalimuthu
W2, Sri Jeyakumar
WW3, Sri K. Srinivasan

For the 2nd Party/Respondent : MW1, Sri S. Selvaraj

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	-	Annexure in the 2(K) petition
Ext.W2Series	1998 1999 2000	Day Certificate issued by Sittaravel, SDOT, Madurai to K. Krishnan and Anandavalli, JTO, T. Bhaskaran, SDE to M.Kalimuthu to show that the employees concerned in this case were employed by Telecom
Ext.W3Series	2003 to 2004	The details of work and the place of work countersigned by the officers of Telecom such as STSO, SDOT, Palani
Ext.W4Series	March, August, October, November, December,1999 January to April, July August, September, October, December,2000	Sample payment receipt signed by SDE, Groups Nagamalai, Pudukottai issued to Kanna and Malairaja
Ext.W5	January 2000 July to Dec.2000 January to September 2001	Key movement register signed by Phone Mechanic, STOA, TTA, JTO of Kalimuthu, while working in Cholavandan Telephone Exchange
Ext.W6	January to March 1999 April to August 1999, October to December 1999 January, February, June 2000	ACE 2 account book maintained by D. Bhaskaran SDE, and S. Anandavalli, JTO, Cholavandan
Ext.W7	16.03.2005	Delivery slip issued by Manimegalai, JTO, authorizing M.Kalimuthu to bring 25 pin chrd of ADAPT
Ext.W8	2002	Opening ceremony of Palamedu exchange wherein Subbaiah, G.M. Madurai, Sudarshanam, GDM, Madurai, Ramasami, SDE,Ramalingam, T.M. and M.Kalimuthu (Petitioner herein), participated.
Ext.W9	2002	The Photo copy of Teleshoppie conducted by cholavandan BSNL, in panchayat kalyana Mahal, Cholavandan, wherein Subbaiah,G.M, Sudarshanam, Panchayat Boar Chairman, Cholavandan and M.Kalimuthu (Petitioner herein) participated.
Ext.W10	10.11.2002	Photo copy of my Marriage ceremony wherein the JTO, SDE, TM, RM, and other employees of the Respondent Participated
Ext.W11	2002 to 2004	Engine Log Book of Rajdhani Exchange
Ext.W12	1999 to 2002	Payment Receipt of P.Jeyakumar
Ext.W13	-	Annexure to the 2(K) petition
Ext.W14	-	Bye-laws of the Union
Ext.W15	30/31 Oct'2001	Resolution of the union
Ext.W16	21.03.2006	Lok Sabha Admitted Provisional Starred Question Dy. NO.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularization of contract Workers.

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours.
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	21.03.2005	Copy of the agreement entered into between BSNL and M/s. G. Devendran S/o, K. Gurusamy, contractor.
Ext.M10	03.01.2002	Certificate of Registration Form-II
Ext.M11	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group “D” employees category.
Ext.M12	28.04.2006	Model Bill for Labours.

नई दिल्ली, 10 अप्रैल, 2017

का.आ. 956.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, बीएसएनएल, चेन्नई व अन्य एवं उनके कर्मचारी के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 43/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.04.2017 को प्राप्त हुआ था।

[सं. एल-40011/32/2002-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th April, 2017

S.O. 956.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 43/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, BSNL, Chennai and others and their workman, which was received by the Central Government on 03.04.2017.

[No. L-40011/32/2002-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI**

Wednesday, the 22nd March, 2017

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 43/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Bharat Sanchar Nigam Ltd. and Two Others and their workman)

BETWEEN :

The Circle Secretary : 1st Party/Petitioner Union
 BSNL Employees Union
 No. 3/71, 4th Street, Raghava Nagar
 Madipakkam
 Chennai-600091

AND

1. The Chief General Manager : 2nd Party/1st Respondent
 BSNL Tamilnadu Circle
 Anna Salai
 Chennai-600002
2. The Chairman-cum-Managing Director : 2nd Party/2nd Respondent
 BSNL, Sanchar Bhawan
 New Delhi-110001
3. The General Manager, BSNL : 2nd Party/3rd Respondent
 Market Committee Building,
 Tollgate
 Vellore-632001

Appearance:

For the 1st Party/Petitioner Union : M/s K.M. Ramesh, Advocates
 For the 2nd Party/Respondents : Sri P. Srinivasan, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40011/32/2002-IR (DU) dated 21.03.2003 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the claim of BSNL Employees Union for absorption of the so-called contract labour continuously engaged by the management of BSNL, Vellore (as per Annexure) is legal and justified and if so to what relief the members of the Union are entitled to?”

2. On receipt of the Industrial Dispute this Tribunal numbered it as ID 43/2003 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim and Counter Statement respectively.
3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner is a registered Trade Union having substantial number of permanent workmen working in BSNL as its members. The workmen concerned in the dispute are doing Store Work. The work performed by them is very essential to the establishment. They cannot be treated as contract labour, though they are engaged on cheaper wage under the nomenclature “Contract Labour”, the so-called contract system is only a camouflage. The alleged Contractors are regular staff of the Respondents. They directly engage the workers, supervise their work and claim and pay wages. The Respondent is an establishment coming under Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act. The concerned workmen have to be made permanent on completion of 480 days in a period of 24 calendar months. There are regular sanctioned posts for regularizing the employees concerned. An Award may be passed holding that the concerned workmen are entitled to regular absorption in the service of the Respondents from the date of their joining, together with continuity of service and attendant benefits.

4. The First Respondent has filed Counter Statement on behalf of other Respondents contending as below:

The petitioner has no locus-standi to espouse the cause of persons who are not employees of the Respondents. The claim does not relate to service conditions of employees of BSNL. As such the claim is not maintainable. The Contractors are not being impleaded as parties to the dispute. Therefore, also the petition is liable to be dismissed. The claim of the petitioner that the concerned employees are under the direct control and supervision of the Respondents, that the Contractors are mainly Officers of the Respondents, etc. are incorrect. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and WW2 and MW1 and documents marked as Ext.W1 to Ext.W4 and Ext.M1 to Ext.M12.

6. **The point for consideration is:**

Whether the concerned workmen are entitled to absorption as claimed?

The Point

6. The dispute is raised on behalf of 14 workmen whose names and other details are given in the annexure to the schedule of reference. As per the annexure the concerned workmen are working in the Store Yard at Vellore. They have started to work in different years between 1992 to 1997. It is the case of the petitioner that all the workmen have been under the direct control of the officials of the Respondents though they were working under the so-called contract system. The contract system is said to be only a camouflage.

7. One of the workman has been examined to substantiate the case of he petitioner. He has filed Proof Affidavit on behalf of other workmen concerned in the case also. It is stated in the affidavit that the concerned workmen were doing the work of loading and unloading of underground cables, line posts, wires, telephone instruments, etc. It is further stated that all the equipments will be coming in several parts and they will be assembled by these workmen. It is also stated in the affidavit that the case of the Respondents that the workmen are only contract labourers is not correct. The workmen are said to have been paid directly from the Offices of BSNL, and prior to the formation of BSNL from the Department of Telecom. They are said to have been getting wages daily. Even disciplinary control of the workmen was with the Respondents. The names of the Officers who are said to have extracted work from the concerned workmen are also given in the Affidavit.

8. The Circle Treasurer of the BSNL Union has given evidence as WW2. He has asserted that the Union has got locus-standi to espouse the cause of the concerned workmen.

9. MW1 is the Divisional Engineer (Administration) in GMT, Vellore. According to him there was a ban in employing workers directly and they were engaged only through Contractors.

10. In spite of WW1 giving details of the work done by each of the workmen, in his Proof Affidavit, no documents are produced to support this case. The documents produced do not serve any purpose. Ext.W1 is only a list containing the names of the concerned workman. This is only a replica of the annexure to the schedule of reference. Two other documents produced by the petitioner are only bye-laws of the Union and the resolution of the Union to espouse the cause of the concerned workmen. There is also Ext.W4, a copy of the reply given to a question in the Parliament. None of these documents refer to any of the workman concerned. There is not even a semblance of evidence to show that any of the workmen ever worked with the Respondents either before the dispute was raised or after it. WW1 has of course described himself as one who is employed under BSNL. But no documents are available to show in what manner he was employed, whether as a Daily Wager, Casual Labour or a Contract Employee. In the absence of any evidence to prove the case the claim of the petitioner for absorption of the concerned workmen has to be rejected.

In view of the above discussion the reference is answered against the petitioner. An Award is passed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd March, 2017)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri C. Krishnamoorthy
WW2, Sri K. Srinivasan

For the 2nd Party/Respondents : MW1, Sri T.S. Manoharan

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	-	Details of employment and wages
Ext.W2	-	Bye-laws of the Union
Ext.W3	30/31 Oct'2001	Resolution of the union
Ext.W4	21.03.2006	Lok Sabha Admitted Provisional Starred Question Dy. NO.10145 for 19.12.2005 by Shri Ganesh Singh regarding regularisation of contract Workers.

On the Management's side

Ext.No.	Date	Description
Ext.M1	24.12.1992	Copy of DOT, New Delhi letter no. 29-18/91-SRT dated 24.12.1992 addressed to CGMR, Calcutta Phones and Endorsement No. E.1/107/Blgs/92-93/3 dated TR-1 the 02.02.1993
Ext.M2	30.03.1985	Office of the Director General Posts & Telegraphs regarding ban order for recruitment of casual labours.
Ext.M3	25.07.1989	Letter from Chief General Manager, Telecommunications, Tamil Nadu Circle, Madras-600002 regarding eligibility of casual labour to become office bearer of the Unions
Ext.M4	-	Copy of Page 137 of Appendix 3 from P&T Manual Vol.III
Ext.M5	-	Copy of Appendix No. 3 – Preservation of Records
Ext.M6	05.11.2001	Letter from BSNL to All Chief General Managers regarding adoption of the existing Appointing Authorities in respect of absorption of Group C and D staff in BSNL
Ext.M7	-	Copy of Appendix 13A at Page 426 of Financial & Hand Book of P&T Rules which deals with Rule-331
Ext.M8	-	Copy of letter from CGM, Telecom, Chennai to all Subordinate Offices
Ext.M9	19.02.2002	Copy of the agreement entered into between BSNL and M/s. M.R.S. Security and Maintenance, contractor.
Ext.M10	25.02.2003	Contract Labour (Regulation and Abolition) Act,1970 and Central Rules,1971-Grant of Certificate of Registration-reg
Ext.M11	22.06.1995	Copy of the document of prescribed procedure to be followed by the Department in the appointment of Group “D” employees category.
Ext.M12	03.02.2003	Model Bill.